WE, THE PEOPLE

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Nani A. Palkhivala

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Some Reviews of
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—*Free Press Journal*

A book worth reading for two reasons — on,e it contains the thoughts of a man of high learning and, secondly, it shows the deliberate neglect of these thoughts on the part of our rulers.

—*Blitz*

****

NANI A. PALKHIVALA was born in January 1920. He was a Professor of Law at the Government Law College, Bombay, and was appointed the Tagore Professor of Law at the Calcutta University. In 1975 he was elected an Honorary Member of The Academy of Political Science, New York, and in 1977, he was appointed Ambassador of India to the United States of America.

In June 1978 the Princeton University, New Jersey (USA), conferred on him the Honorary Degree of Doctor of Laws, describing him as "defender of constitutional liberties, champion of human rights, teacher, author and economic developer." In April 1979 the Lawrence University, Wisconsin (USA), conferred on him the Honorary Degree of Doctor of Laws.

Palkhivala has argued a number of historical cases in the courts of India and abroad. He is also associated with several industrial and business houses as Chairman, Vice-Chairman and Director.

We, the People

India – The Largest Democracy

For Respected Daddy

N. A. Palkhivala

with love n regards

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TO MY COUNTRYMEN

who gave unto themselves the Constitution
but not the ability to keep it,

who inherited a resplendent heritage
but not the wisdom to cherish it,

who suffer and endure in patience
without the perception of their potential

If I were to look over the whole world to find out the country most richly endowed with all the wealth, power, and beauty that nature can bestow—in some parts a very paradise on earth—I should point to India. If I were asked under what sky the human mind has most fully developed some of its choicest gifts, has most deeply pondered on the greatest problems of life, and has found solutions of some of them which well deserve the attention even of those who have studied Plato and Kant—I should point to India. And if I were to ask myself from what literature we, here in Europe, we who have been nurtured almost exclusively on the thoughts of Greeks and Romans, and of one Semitic race, the Jewish, may draw that corrective which is most wanted in order to make our inner life more perfect, more comprehensive, more universal, in fact more truly human, a life, not for this life only, but a transfigured and eternal life—again I should point to India.

—Friedrich Max Müller

It is already becoming clear that a chapter which had a Western beginning will have to have an Indian ending if it is not to end in the self-destruction of the human race.... At this supremely dangerous moment in human history, the only way of salvation for mankind is the Indian way—Emperor Ashoka's and Mahatma Gandhi's principle of non-violence and Sri Ramakrishna's testimony to the harmony of religions. Here we have an attitude and spirit that can make it possible for the human race to grow together into a single family—and, in the Atomic Age, this is the only alternative to destroying ourselves.

—Dr. Arnold Toynbee

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Introduction—and a Personal Note

An Indian at 64 is, statistically speaking, living on borrowed time. In the evening of life, one may be forgiven for desiring to put within the covers of a volume some papers which are not wholly fugitive and not altogether without a clue.

Here are extracts—slightly edited in some cases—from my speeches and writings of over three decades. There is a unity underlying them—they converge upon the subject which has supplied the title of the book.

Basic thoughts and themes recur in the papers. In some places they are in an anticipatory or embryonic form and are developed elsewhere. I have allowed myself to be persuaded that such overlaps were not a fatal objection to their publication.

The pieces written during the Emergency have been advisedly republished. No period in the history of our republic is of more educative value than 1975 to 1977. George Santayana said, "Progress, far from consisting in change, depends on retentiveness . . . Those who cannot remember the past are condemned to repeat it." If our basic freedoms are to survive, it is of vital importance that we remember the happenings during the Emergency when the freedoms were suspended. What has happened before can happen again.

The picture that emerges is that of a great country in a state of moral decay. The immediate future seems to belong to the doomsayers rather than to the cheermongers. We suffer from a fatty degeneration of conscience, and the malady seems to be not only persistent but prone to aggravation. The life style of too many politicians and businessmen bears eloquent testimony to the truth of the dictum that single-minded pursuit of money impoverishes the mind, shrivels the imagination and desiccates the heart. The tricolour fluttering all over the country is black, red and scarlet—black money, red tape and scarlet corruption.

Man has been defined as a rational animal. But you cannot live in India without being constantly reminded that this definition was given to man by man himself in a characteristic moment of self-adulation.

It has been said that Nature is a wonderful handicapper: to some women it gives the beauty of Madonna and the brains of a linnet. I am prepared to believe that this is not true of the fair sex, but I am not prepared to believe that this is not true of nations. To a country like Japan Nature gives the handicap of almost total absence of natural resources but gives it a sense of national devotion which enables the country to be one of the most prosperous and powerful in the world. To some other countries it gives the gift of oil but without upgraded human resources. To India Nature has given immense intelligence and skills but no sense of public duty, discipline or dedication.

Our besetting sin is secular *Fundamentalism.* Fundamentalism is the triumph of the letter over the spirit. It spurns the lesson taught two thousand years ago that the letter killeth but the spirit giveth life. In our unwitting addiction to fundamentalism we are fully supported by two defects in our national character – lack of a sense of fairness, and lack of a sense of moderation.

Constitutional fundamentalism has enabled the Union to rob the States of their constitutional right to deal with industries, by the simple expedient of Parliament irrationally declaring that control over them by the Union is "expedient in the public interest". The letter of the Constitution is satisfied, while the spirit of the Constitution is buried fifty fathoms deep.

Similarly, the governments at the Centre and in the States bypass with impunity the legislature and promulgate a spate of Ordinances which are patently unconstitutional. An Ordinance can be promulgated only when *necessity* compels *immediate action* while the legislature is not in session (arts. 123, 213 and 239B), whereas Ordinances are being regularly promulgated in India just before the session of the legislature is to begin so as to confront the legislature with an accomplished fact, or just after the session is over. All schemes of nationalization of individual undertakings or entire industries are invariably kept back while the legislature is in session and are promulgated only in the form of Ordinances. The letter of the Constitution is satisfied by the President or the Governor making a declaration that while the legislature is not in session, "circumstances exist

which render it necessary for him to take immediate action". The President as well as Governors are bound to act on the advice of the Council of Ministers who are jubilantly aware that outraging the sanctity of the Constitution, however shamelessly, is not a punishable crime.

Again, an Ordinance which is intended to be a temporary law to meet an urgent crisis ceases to operate at the expiry of six weeks from the reassembly of the legislature. But by the plain device of repromulgating Ordinances again and again, they are kept indefinitely alive, while the assembly and prorogation of the legislature are merely interludes in the Ordinance raj. As Dr. D. C. Wadhwa has pointed out in his book* published last year, in the Bihar State alone 256 Ordinances were kept alive for periods ranging from one to fourteen years.

The Constitution is not a structure of fossils like a coral reef and is not intended merely to enable politicians to play their unending game of power. It is meant to hold the country together when the raucous and fractious voices of today are lost in the silence of the centuries.

In the field of economics we have the same phenomenon of fundamentalism. The government respects the letter of socialism—state control and state ownership—while the spirit of social justice is left no chance of coming to life.

Our public administration has no conception of the value of time. A recent study made by the Economic and Science Research Foundation showed that if there had been no delays in the implementation of Plans (*a*) the national income would have increased by Rs. 1,20,000 crores annually; (*b*) exports would have risen annually by Rs. 9,600 crores; (*c*) annual production of foodgrains would have been higher by 54 million tonnes; (*d*) 14.4 million more jobs would have been created; and (*e*) the *per capita* income would have increased threefold. It is significant that we are probably the only country in the world in whose national language the same word—*kal*—is used to denote both yesterday and tomorrow.

In the last two decades, we have taken plenty of wrong turns at the crossroads, misused time, taken gold for dross and dross

**Repromulgation of Ordinances: A Fraud on the Constitution of India.*

for gold. However, I should like to reaffirm my unquenchable confidence in the long-term future of India. Rabindranath Tagore felicitously observed, "Every child born into the world brings a message from God that He is not yet discouraged with man." Then who are we to be discouraged with our fellow-citizens? Our follies and misfortunes are not going to be for ever. The oracle of today drops from his pedestal on the morrow. In the affairs of nations, as in the business of the elements, winds shift, tides ebb and flow, the boat rocks. Luckily, we have let the anchor hold. We have survived as a united democracy—a historic achievement. When Abbé Sieyès was asked what was his achievement during the French Revolution, he replied, "I survived!"

II

A brief personal note may not be out of place here. What a man *thinks* on various subjects is largely coloured by what he *believes,* and what he believes is largely coloured by what he has experienced.

An eminent scientist of our day said, "We do not run this place; it runs itself. We are a part of the running." Albert Einstein refused to believe that God plays dice with the universe. It is equally difficult to believe that He will permit the human race to play dice, even with an insignificant planet in a small galaxy, located in an unimportant part of the universe. I have deep faith in the existence of a Force that works in the affairs of men and nations. You may call it chance or accident, destiny or God, Higher Intelligence or the Immanent Principle. Each will speak in his own tongue.

Upon joining the Bar in 1944, I started reading briefs and I have kept on reading, past Diwalis, past Mohurrums, past long vacations,—like the Rajdhani Express speeding past railway stations. I believe that the journey will be over at the predestined hour, irrespective of the medical care which money can buy.

I am alive today only because of a virus that infected me more than thirty years ago. I was engaged to argue a Special

Leave Petition which was to be heard in the Supreme Court on May 8, 1953. Chandrakant Mehta, a partner of Gagrat & Company, was the instructing Attorney. We booked our return tickets from Delhi to Bombay by the night flight on the same day. On May 5, I developed a very bad cold with fever and had to return the brief. The next day I agreed to change my mind and do the case since it meant a lot to a poor and deserving litigant. But on May 7 my temperature rose higher and I had no option but to return the brief once again. C. K. Daphtary, the Solicitor-General, who lived in Delhi was gracious enough to agree to step into my place. Since I did not go to Delhi, Chandrakant Mehta, who disliked flying by night, went to the Airline office and changed his own return ticket to the morning flight on May 9. The plane which left Delhi on the late evening of May 8, with a full passenger load, crashed. There were no survivors.

As a child I suffered from a dreadful stammer. It seemed that I had as much chance of becoming an advocate or a public speaker as a victim of multiple sclerosis has of becoming an Olympic athlete. With the recklessness characteristic of a child, I ventured to take part in elocution competitions; but I believe that without Providential grace my own will to get over the handicap would have been in vain.

At certain turning points in my life, when I would have made wrong decisions with my limited intelligence, I have felt as if my will was perceptibly bent by some Higher power which saved me from myself.

"There's a divinity that shapes our ends,
Rough-hew them how we will."

As Malcolm Muggeridge says in his autobiography, "In all the larger shaping of a life, there is a plan already, into which one has no choice but to fit."

To my parents, to their love and care and guidance, I owe a debt which could never be repaid. From them I learnt that all the loveliness in the world can be reduced to its first syllable.

My father inculcated in me a passion for literature, which has remained an abiding joy throughout my life. I still vividly

recall discovering, as a child of ten, the magic that lies in words. It was the day my father read out and explained to me an incident in Macaulay's life. In 1847 Macaulay lost his seat for Edinburgh in the election to the House of Commons. On the evening of his defeat, he composed verses in which he described the Spirit of Literature consoling him with her enduring bounty:

"Fortune, that lays in sport the mighty low,
Age, that to penance turns the joys of youth,
Shall leave untouched the gifts which I bestow,
The sense of beauty and the thirst of truth."

My mother was a woman of exceptionally strong character who could meet with Triumph and Disaster and treat the two imposters just the same. Her attitude to life was that of the unknown Confederate soldier who wrote the following Prayer:

"I asked God for strength, that I might achieve;
I was made weak, that I might learn humbly to obey.
I asked for health, that I might do greater things;
I was given infirmity, that I might do better things.
I asked for riches, that I might be happy;
I was given poverty, that I might be wise.
I asked for power, that I might have the praise of men;
I was given weakness, that I might feel the need of God.
I asked for all things, that I might enjoy life;
I was given life, that I might enjoy all things.
I got nothing that I asked for—but everything
I had hoped for.
Almost despite myself, my unspoken prayers
were answered.
I am among all men, most richly blessed."

I can hope for no greater reward than that young readers with their lives before them may find in this volume something to inspire them with an earnest and unflagging zeal for renewing the youth of the State.

Bombay,
January 16, 1984

N. A. Palkhivala

PART I

Education, Democracy and Socialism

1

THE STATE OF THE NATION

The four costly failures

**(*The Illustrated Weekly of India*, November 21, 1982
Later adapted for the Convocation Address,
The Indian Institute of Management, Ahmedabad,
March 25, 1983)**

1982 has been the Year of Disorder — an omnibus and ominous word which covers violence, indiscipline and corruption.

In the land of the Mahatma, violence is on the throne today. Its victims, among others, are helpless passengers in trains, loyal workers in strike-bound factories, and innocent citizens on riot-stricken roads when the *bandh**-mongers claim the freedom of the city. Our militant trade union leaders are well-qualified to adopt the words of Konrad Lorenz, the Nobel prize-winning naturalist, "I believe I have found the missing link between animals and civilized man — it is we".

Civilization is an act of the spirit. Ancient India was far more civilized than modern India with its satellites in space.

In recent months "the banality of evil" has come home to us with a strange poignancy. The recurrent looting of banks in broad daylight arouses as little public attention as the going down of the sun in the evening. Not since the abolition of thuggery by Lord William Bentinck in the 1830s has violence characterized our national life on a scale so widespread and so unchecked as today. Our legal system has made life too easy for criminals and too difficult for law-abiding citizens. A touch here and a push there, and India may become ungovernable under the present constitutional setup.

* An attempt by militant workers to paralyze life in a city.

There are two main reasons for this sordid state of affairs. *First,* as a nation, we have scant concern for public good and far too few citizens are interested in public welfare. We forget that crime is not a problem for the police only but for the whole society.

Lack of concern for public good manifests itself in many ways — in the way we walk or drive on the road and in more significant things like our attitude to encroachments on or destruction of public property. The general reaction to the millions of encroachments which are suffocating the cities is governed by what is loosely assumed or hastily glimpsed or piously hoped. We have no sense of pride in our city, country or history. How many citizens are willing to speak up in support of the Municipal Commissioner who is left with the odium of discharging his statutory duty of protecting national assets?

We are as careless about public property as we are careful about our own property. Those who would not allow any trespass on their private estate are willing to contemplate, with total equanimity, encroachments on public property and destruction of public amenities. Bombay and other cities are in a state of galloping decay partly resulting from public property being encroached upon with impunity, with the misguided sympathy of a section of the citizens.

Humanitarianism must be distinguished from miscarriage of mercy. Countless slumlords who have grabbed public lands are making large untaxed incomes every month out of the miseries of the homeless. No doubt, shelter for every citizen is an imperative of any good government, but there are cleaner ways of achieving that goal than converting public property into slumlords' illegal estates.

No city, no democracy, can survive without law and order. Public interest requires promotion of law and order, not its denegation and destruction. Those who support encroachments may be motivated by kindliness, but good motives are not enough. Many Naxalites* are impelled by good motives to criminal action, and even Naxalite courts claim to proceed on notions of social justice.

Secondly, the alarming rise in the incidence of crime is partly due to the general lowering of standards in public and

* Extreme leftists who believe in violence.

private life. The economic recession is, no doubt, disquieting, but infinitely worse is the moral and spiritual recession. The roots of disarray are in our minds and not in the price of fish or fowl. Inflation — the erosion of our currency — has been checked, but not erosion of national character.

The quality of our public life has reached the nadir. Politics has become tattered and tainted with crime. The moral standards of our politicians, policemen and criminals are indistinguishable from one another. India today is a living example of the fact that cynicism corrupts and absolute cynicism corrupts absolutely.

The four costly failures of the government and the people, which are the direct causes of the present sorry spectacle, are:

(1) Failure to maintain law and order. We have too much government and too little administration; too many public servants and too little public service; too many controls and too little welfare; too many laws and too little justice.
(2) Failure to bring the unbounded economic potential of the country to fruition.
(3) Failure to make human investment — investment in education, family planning, nutrition and public health, in contradistinction to physical investment in factories and plants. Gross national happiness should have been given priority over gross national product.
(4) Failure to provide moral leadership. We do not live by bread alone, and we are greater than we know.

The blame must be shared by the people along with the government; because it is the public who elect politicians to power, and because private initiative of the citizenry could have gone a long way towards counteracting the deficiencies of the government.

India still continues to be the fifteenth poorest nation in the world, with a per capita income of less than 200 dollars per annum. Half of our people on the eight crore farms in the six lakh villages still live below the subsistence line. The rural labourer's plight seems timeless and unchanging:

"His speech is of mortgaged bedding,
On his vine he borrows yet,
At his heart is his daughter's wedding,
In his eye foreknowledge of debt.
He eats and hath indigestion,
He toils and he may not stop;
His life is a long-drawn question
Between a crop and a crop."

The human raw material in this country is as fine as can be found anywhere else on earth. We are second to none in intelligence and the spirit of enterprise and we have all the skills and capability to be a great economic power. How we manage to remain poor is an uncomfortable question, the answer to which would not be flattering to our politicians and ideologues.

While the prospects of industrial recovery are a mirage shimmering tantalizingly over the desert wastes of the current recession, the latest Report of the Reserve Bank gives a bright picture of the Indian economy. That Report shows that governmental ways have not changed since the British days when Kipling sarcastically noted, "The Indian Government being minded to discover the economic condition of their lands, sent a Committee to enquire into it; and saw that it was good."

Article 45 of the Constitution enacts, "The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years". Even 32 years after the Constitution came into force, 67 per cent of our people are literally illiterate, making meaningful democracy impossible but making it easily possible for politicians to have a vested interest in illiteracy and public ignorance.

Thomas Jefferson, one of the founders of the United States of America, remarked, "If a nation expects to be ignorant and free, it expects what never was and never will be". When a republic comes to birth, it is the leaders who produce the institutions. Later, it is the institutions which produce the

leaders. The question — where are the leaders of tomorrow?— can only be answered by the other question — where are the nation-building institutions which can produce the leaders of tomorrow?

Do we have educational institutions which aim at generating excellence, and which are equipped to produce "movers of people, mobilizers of opinion" — integrated personalities whose minds, hearts and character have been developed in the noble traditions of our invaluable heritage?

I am using the word "education" in its profound sense. Animals can be trained; only human beings can be educated. Education requires personal participation and transformation. It cannot be given to anyone: it must be inwardly appropriated. It involves cultivation of the mind, not merely with a view to offering it as a commodity for sale in the marketplace.

H. G. Wells wisely observed that human history is becoming more and more a race between education and catastrophe. This observation indicates what our people without education are heading for.

The child is father of the man. The quality of education of the children of today will determine the quality of life in India tomorrow.

"In ancient shadows and twilights
Where childhood had strayed,
The world's great sorrows were born
And its heroes were made.
In the lost boyhood of Judas
Christ was betrayed."

We are very poor at maintenance — whether it is the maintenance of our power plants or factories, historical monuments or buildings, cities or universities. So far from establishing elitist educational institutions, we have down-graded and devalued the fine universities which existed when we became a republic. In those days college buildings did not leak — nor did examination papers. The Bombay, Calcutta and Madras Universities are 125 years old. Nature has kindly denied us a sense of history and therefore we are saved the anguish of realizing the contrast between what these

educational institutions were during the first 100 years and what they have been reduced to in the last 25.

When we became a republic, we forgot that freedom is like alcohol,—it must be taken in moderation. We discarded the old norms of discipline and decorum, dignity and decency, in our universities. Today the university student is aware that what he knows does not count in the examination half as much as who he knows. At best, our present-day universities are academic cafeterias offering junk food for the mind. At their worst, they are the breeding-grounds of corruption and indiscipline, dishonesty and irresponsibility.

There are two basic lessons of Indian history. First, our people have always taken their moral standards from their rulers: the people have risen to great heights when they have basked in the glow of noble kings or leaders. Secondly, regimes and kingdoms have been destroyed not by adversity but by abasement. Corruption is the greatest solvent of public institutions; poverty poses a far smaller threat.

So far from giving the moral leadership which the people are yearning and waiting for, our politicians are only occupied in maintaining a system which is poisoned by collective bad faith and polluted by individual avarice. They are served by deception and craftiness, instead of vision and imagination. The caption of a famous cartoon, "The world is neither flat nor round—it is crooked", aptly sums up the world of Indian politics. In modern India, Machiavelli would have remained unemployed on account of his *naiveté*.

Our ministers look with austere disfavour upon any attempt to depict the reality. They find something indecent in the naked truth,—hence the Bihar Press Bill. They wax eloquent on the blessings of the government they represent. It is interesting to recall that eloquence flourished most in Rome when public affairs were in the worst condition.

If we are asked what the three and a half decades of self-government have taught us, we must admit ruefully in the words of T. S. Eliot, "We had the experience, but missed the meaning".

The man who did not miss the meaning and implications

of freedom was C. Rajagopalachari who clearly foresaw what freedom without education would bring in its wake. While in jail for civil disobedience he made the following entry in his prison diary on January 24, 1922:

> *"Elections and their corruptions, injustice and the power and tyranny of wealth, and inefficiency of administration, will make a hell of life as soon as freedom is given to us. Men will look regretfully back to the old regime of comparative justice, and efficient, peaceful, more or less honest administration.*
>
> *"The only thing gained will be that as a race we will be saved from dishonour and subordination.*
>
> *"Hope lies only in universal education by which right conduct, fear of God and love will be developed among the citizens from childhood.*
>
> *"It is only if we succeed in this that* Swaraj* *will mean happiness. Otherwise it will mean the grinding injustices and tyranny of wealth. What a beautiful world it would be, if everybody were just and God-fearing and realized the happiness of loving others! Yet there is more practical hope for the ultimate consummation of this ideal in India than elsewhere."*

Rajaji's words contain an amazingly accurate prediction of our disenchantment with the present state of affairs, while they also provide hope for the distant future.

Finally, a word to clarify that I am by no means unmindful of all that we have accomplished as a young republic. The whole point of this piece is to stress that our innate potential is far, far greater than our actual achievement. Creative dissatisfaction is the surest way to fulfilment of the dreams of our founding fathers.

* Self-government; liberation from foreign rule.

The mess we are in

(*The Illustrated Weekly of India,* August 11, 1974)

This month the world's largest functioning democracy enters the twenty-eighth year of its history. Men, anxious-eyed, ask the question whether freedom's foundations will stay. We know, and the world knows, that we are going down the inclined plane. Whatever the rate of descent, the abyss is still at the end of the road.

A highly reputed agency, known for its perceptive analysis of world events, has recently made a major attempt to forecast the future of the Indian Ocean region in the 1982-1991 era. One aspect of the studies focussed on the internal stability of the countries in the area. The result indicated that in that decade India is likely to have the highest level of general political violence (demonstrations, riots, internal armed attacks and assassinations)—a higher level than will probably be reached by any country of Africa or the Middle East. This forecast is not belied by our present economic floundering, political unrest, constitutional erosion and moral degradation in public life.

It is simple to support disbelief in these grim forebodings by the facile assumption that we shall always be able to muddle through and by pointing to the fact that unrest is worldwide. Barring the nations behind closed doors, about whom nothing can be said with certainty, inflation and discontent seem to be raging through all countries. Like the animals with the plague in La Fontaine's fable, "All did not die, but all were stricken."

But it would be unwise to ignore the tocsin. The staying power of democracy varies from country to country. The timing of political breakdown depends upon the strength of political institutions and the severity of economic crisis. Collapse may not overtake a country marked by economic failure where the political institutions have acquired durability through age and tradition; nor may it engulf a nation whose economic growth makes up for the weakness of its political institutions. But the danger facing India is that it combines economic stagnation

with fragile institutions and a Constitution which is looked upon by politicians as so pliant that it can be bent to any whim or caprice of the ruling clan.

It would be easier to underestimate than to exaggerate the dangers inherent in our present economic crisis. Currently, prices are higher by 29 per cent over the last year. The credit squeeze and the Ordinances recently promulgated to effect a partial freeze in wages and an absolute cut in dividends do not touch the root cause of inflation. They will be counter-productive in so far as they will severely affect industrial production. At best they merely amount to an attempt to cure the patient's fever by cooling the thermometer.

Keynes believed that "the ultimate cause of inflation is the impecuniosity of governments." According to him, "inflation is a mighty tax-gatherer.... by a continuous process of inflation governments can confiscate secretly and unobserved an important part of the wealth of their citizens". What Keynes called "the inflationary gap" may be defined as the amount of government expenditure against which there is no corresponding release of real resources or materials by the community. In other words, the "inflationary gap" can be bridged or eliminated only by increased production on the farms and in the factories. The real curse of India is that our archaic style of socialism does not permit the requisite increase in the production of food and other wage goods, nor a surge in the job potential. Socialism has become merely the currency in which the political parties play their game. Our ideology is inane; and our obsession with it insane.

> *"We would rather be ruined than change;*
> *We would rather die in our dread*
> *Than climb the cross of the moment*
> *And let our illusions die."*

Our ideology dictated, while common sense deplored, that we invest in basic heavy industries instead of agriculture and production of wage goods.

There is an acute scarcity of coal, particularly after nationalization in 1971. While electricity companies in the private

sector are working at a profit despite a statutory restriction on the rate they can charge the consumer, the State Electricity Boards are working at a loss despite no such restriction. Many of them never have their accounts ready in time. Some of them openly admit that as much as one-third of the electricity they generate is "stolen" by unauthorized connections or otherwise.

Fifty per cent of our energy requirements is met through non-commercial sources like cow-dung and firewood, and this is about the only source which has not suffered from the blast of inflation. Twenty-five per cent is met by coal and electricity and the remaining twenty-five per cent by petroleum products. Shortfall in targets of electricity generation has persisted throughout our history as a republic, despite the fact that all along the targeted financial outlays have either been reached or exceeded. This is mainly because of poor operational efficiency and the total absence of any "maintenance" worthy of the name.

This is not to say that no units in the private sector suffer from inefficiency and incompetence. But the point is that instead of encouraging and promoting efficient and honest enterprises wherever they are found—whether in the public, private or joint sector—our radicals cry for more and more nationalization.

As Professor Galbraith observed, "Even British socialists, in some ways the world's most ardent defenders of doctrine for the sake of doctrine, have largely given up on public ownership or have reduced their commitment to it to a purely symbolic level. That is because it no longer serves a clear purpose in the British economy. The common denominator of all this change is the tendency to accept, sometimes rather reluctantly, what works... One wing of the modern left prefers in practice to attack capitalism and accept poverty rather than have a greater measure of progress with a pragmatically mixed economy."

Our demagogues use the word "monopoly" in a savagely distorted sense. Mere size, irrespective of the share of the market, is termed as a "monopoly". If a capital-intensive industry with assets of sizable value has only 5 per cent of the market, it is still talked of as a monopoly. Such distortion

of language leads naturally to distortion of thought. Because during the recent years the government denied or delayed expansion of undertakings of proven efficiency and integrity and the commencement of new enterprises in the fields of fertilizers, cement, steel, trucks and other engineering goods, we cannot take advantage of the present tremendous demand throughout the world for these products at high prices. Indian technicians are advising Iran (annual growth rate of 14.5 per cent) on the Tanavir Project which is for nationwide generation of electric power, but our "anti-monopoly" policy does not permit the same Indian firm to generate more electricity for our own people. Indian engineering enterprises are training youths and creating more jobs in Singapore (annual growth rate 15 per cent), but our socialism will not permit them to generate employment and wealth for our own people, while our youths join the army of the unemployed in increasing numbers.

Already Indian firms have formed joint ventures in 27 countries in Africa, the Middle East, South-East Asia and South America. Even in developed countries, such as the UK, the USA, Canada, West Germany, Japan and Australia, Indian entrepreneurs are collaborating in setting up industrial units. Many developing countries in the Middle East and Africa prefer Indian technology which is labour-intensive and which therefore suits the labour-abundant economies of those countries. What unforgivable folly, what a crime against the nation, to let Indian enterprises and skills solve the economic problems of other countries but not our own!

The evil is compounded by the fact that the positive anti-growth measures in the field of economics are balanced by the government's negative approach and masterly inactivity in the area of population growth. The red triangle is truly the symbol of our salvation. If we had incurred result-oriented expenditure on family planning in the amount we have spent only on Bokaro Steel, the history of India would have been different.

The black market is the ulcer in the stomach of our economy, and we seem to take deliberate pains to ensure that it is not cured. The three main causes of black money are:

shortages due to inadequacy of production, irrational price and distribution controls, and excessive taxation. The black-marketeer—who invests nothing, produces nothing and pays no taxes—is allowed to gather rewards for being a parasite on society, while the honest manufacturer is compelled to work at a loss.

Most of our economic ills can be traced to our inability to understand that we are not called upon to choose between "laissez faire" and the monolithic state. G. K. Chesterton disposed of the objection that we must choose between capitalism and socialism in the following words: "It is like saying we must choose between all men going into monasteries and a few men having harems. If I denied such a sexual alternative, I should not need to call myself a monogamist; I should be content to call myself a man."

There are other truly socialist countries which have pursued the golden mean, the pragmatic middle way which enables a nation to enjoy the fruits of a mixed economy which is half the competitive world of nature and half the socialized world of state planning. In socialist Sweden three-quarters of all production comes from 200 large companies in the private sector.

The economic malaise would have been less unbearable if our basic freedoms were not eroded, the strength of our political institutions not sapped and our public life not degraded.

We have subordinated the individual to the state so completely that, with some exceptions, the nation is now made up of one-dimensional men. In the words of John Stuart Mill: "The worth of a state, in the long run, is the worth of individuals composing it. A state which dwarfs its men in order that they may be more docile instruments in its hands even for beneficial purposes—will find that with small men no great thing can really be accomplished and that the perfection of machinery to which it has sacrificed everything will, in the end, avail it nothing."

We have devalued the judiciary, as we have devalued every other important institution. Instead of defending our judges against political pressures and threats, instead of insisting upon

integrity and impartiality in judicial appointments, we have permitted the executive to enunciate and apply the astounding doctrine that it is at liberty to supersede judges of calibre and courage and appoint men who "subscribe to the philosophy of the ruling party."

As Lord Hailsham said in December 1973, "The symptoms of our malaise may be economic and may show themselves in price rises, shortages and industrial disputes. But underlying the symptoms is a disease which has destroyed democracies in the past and the causes of that disease are not economic. They are moral and political and constitutional, and in order to cure it we must recognize them as such."

In the last analysis, it is the spirit, the moral fibre, which makes a nation. India has either lost, or is still searching for, her identity. We have close to 600 million *individuals* as against Japan which has a little over 100 million *citizens*; and one citizen is worth a thousand individuals. The farthest we emerge out of our self-centredness is to display the narrowest linguistic and regional fanaticism. Inter-State animosity is growing. A nation which is constitutionally united and politically disintegrated may explode nuclear devices but will never have the inner strength which is so necessary to sustain it in adversity or to progress towards prosperity.

The tone of public life has reached an all-time low. We have democracy without meritocracy. Ignorance, incompetence and dishonesty are no disqualifications for high public office, either in the ministerial ranks or elsewhere. If the charges against various politicians in and out of power are to be investigated, India will need to have Ombudsmen the way Australia has rabbits.

But the picture is not one of unrelieved gloom. We have an imperishable heritage. The same Bihar which is the hotbed of corruption was once the heart of the noble empire of Ashoka. Looking back, down the frozen centuries, you see the grace and grandeur of Pataliputra where now you have the filth and squalor of Patna. It is impossible to believe that this nation has lost its greatness for ever. The time will come when it will redeem itself. After all, in our own century India represented

the greatest moral force known to modern history and wrested its freedom, without weapons, from the largest empire on earth.

We have plentiful natural resources. We have vast skills and talents and abundance of enterprise. We have enough organizing capacity—otherwise we could not have fed, clothed and sheltered ten million refugees. All that we need is the emergence of dedicated men who can strike a chord in the hearts of our trusting, grateful millions and who can teach by the example of their lives the lessons which precept can never impart.

A prescription for the Sick Man of Asia

India is today the Sick Man of Asia. But this nation will come back to health and grow strong and puissant—

when we break our tradition of being collectively foolish despite being individually intelligent;

when we shed our self-defeating brand of socialism which is sometimes half-Marxist and sometimes half-baked;

when every class of citizens puts the nation above the party and the group;

when the change from privilege to talent and from accident of birth to accent on calibre is brought about in the corporate board rooms;

when businessmen and professionals realize that there is more to life than success, and more to success than money;

when money comes to be regarded as something to be earned rather than to be got or won;

when extra effort is put before extra leisure and working hours are not turned into tea breaks and chatting sessions;

when we stop our society disintegrating into factions and divisions supplanting unity;

when the leaders have the wisdom to perceive the truth and the courage to say it to the people;

when the electorate realize that the entire destiny of the country is in their own hands and that there is no substitute for knowledge and integrity in public life;

when men are appointed to high public offices because of what they are and not because they represent a community or a region;

when we appreciate that national progress is only the sum total of individual effort and that the government can achieve nothing without unleashing the energies of the citizens.

At the time of elections, these are the matters to be weighed and talked about, instead of slogans and claptrap, caste and clan, creed and language.

2

CONVOCATION ADDRESSES

The treason of the intellectual

(Convocation Address, The University of Bangalore, January 15, 1972)

My tribute to your University which has honoured itself by conferring the degree of Doctor of Laws on Mr. K. Subba Rao, the former Chief Justice of India, and one of the great judges of our time. Dr. Subba Rao combines an amazing grasp of the basic principles of law with outstanding judicial independence. In the years ahead, as the erosion of our basic rights proceeds apace, there will be an ever-widening understanding and appreciation of Dr. Subba Rao's vision of our magnificent Constitution as originally drafted. His decisions form a memorable chapter in the history of not only our constitutional law but also of our tax laws and various other branches of jurisprudence.

I extend my hearty congratulations and good wishes to those who have carried away the prizes. My sincere wish is—may God grant them the fulfilment, in their maturer years, of the promise of their college days. I know how much industry, patience and stern discipline, and how many hours of self-denying toil, are represented by the young men and women who have distinguished themselves at the examinations.

To the others who have also taken their degrees at this Convocation, I wish a bright future and fulfilling life-work.

As regards those who have not been as successful in their examinations as they thought they deserved to be, I can only recall the words of Professor Walter Raleigh that the College Final and the Day of Judgment are two different examinations. They may also take some consolation from the fact that A. E. Housman, the great scholar of Greek and Latin, and better known as a poet, once failed in the papers on those very

languages at the Oxford University. His biographer Richards comments, "The nightingale got no prize at the poultry show."

Before I start speaking to my fellow students,—I call you fellow students because, I hope, I have not stopped learning—I would like to pay my tribute to the teachers and professors here and at the other universities of our country who trim the silver lamp of knowledge and keep its sacred flame bright from generation to generation. They expend their lives on significant but unadvertised work. Quite a few of them plough the lonely furrow of scholarship. Their dedication bears witness to the selflessness of the human spirit.

In ancient India, kings and emperors thought it a privilege to sit at the feet of a man of learning. Intellectuals and men of knowledge were given the highest honour in society. King Janaka, himself a philosopher, journeyed on foot into the jungle to discourse with Yajnavalkya on high matters of state. In the eighth century Sankaracharya travelled on foot from Kerala to Kashmir and from Dwarka in the west to Puri in the east. He could not have changed men's minds and established centres of learning in the far-flung corners of India but for the great esteem and reverence which intellectuals enjoyed.

Unfortunately, in our own times we have down-graded the intellectual and have devalued the very word. Today an "intellectual" means a man who is intelligent enough to know on which side his bread is buttered.

I would like to say a few words to the graduates who are about to face the struggle of life. It has been said that there are two kinds of fools in the world—those who give advice and those who do not take it. I propose to belong to the first category, in the hope that you will not belong to the second.

Education has been called the technique of transmitting civilization. In order that it may transmit civilization, it has to perform two major functions: it must enlighten the understanding, and it must enrich the character.

The two marks of a truly educated man, whose understanding has been enlightened, are the capacity to think clearly and intellectual curiosity.

In the eighteenth century, Dean Swift said that the majority of men were as fit for flying as for thinking. Technology has made it possible for men to fly, or at least to sit in a contraption that flies, but it has not made it possible for men to think. If your education has made it possible for you to think for yourself on the problems which face you and which face the country, your college has done very well by you. If this habit of thinking for yourself has not yet been inculcated in you, you would be well advised to acquire it after you leave college. As the cynic remarked, a formal education at a university cannot do you much harm provided you start learning thereafter. The capacity to think clearly should enable the student to sift, and reject when necessary, the ideas and ideologies which are perpetually inflicted on him by the mass media of communication. It should enable him to realize that these mass media are in chains,—in chains to the foolish and narrowing purposes of selling consumer goods, and to the narrowing and stifling purposes of politics. A liberal education is a prophylactic against unthinking acceptance of the modern *"mantras"** which are kept in current circulation by the mass media.

If you have imbibed the ability to think clearly, you will adopt an attitude of reserve towards ideologies that are popular and be critical of nostrums that are fashionable. It is true that in a democracy the majority view should prevail. But never make the mistake of thinking that the validity of a proposition or the correctness of a doctrine depends on the number of people who believe in it. As you grow older, the truth will come home to you that in the fields of politics and economics, the soundness of an ideology is often in inverse proportion to the popular support it commands.

As Alfred Marshall said, "Students of social science must fear popular approval; evil is with them, when all men speak well of them. It is almost impossible for a student to be a true patriot and have the reputation of being one at the same time."

Intellectual curiosity would enable the student to continue, nay, to intensify, the process of learning after he has come out of the comfortable cocoon of the university and is thrown into the maelstrom of life. Over the centuries, mankind has built

* Expressions or formulae meant to be recited and supposed to have occult effect.

up a treasure-house of art and knowledge—of thoughts that wander through eternity, and of art which is the wide world's memory of things. The pursuit of knowledge and the exploration of the priceless cultural heritage of India and other countries, are too vast for the longest life. After all, any human life, long or short, is just a brief candle—

> *"Life is but a wintry day;*
> *Some come to breakfast and away;*
> *Others to dinner stay*
> *And are full fed;*
> *The oldest man but sups*
> *And goes to bed."*

A well-furnished mind is as rare as a well-lived life. I hope you will not commit the error, as you go through life, of merely doing your chores day after day. Feel the inner joy of the mind questing for knowledge. Reserve a few minutes for great literature. I would recommend to you the habit of reading at least a few pages of an immortal classic every morning before going down into the battle and the choking dust of the day. It is amazing how great books of yore replenish life and make it fuller and richer. In the beautiful words of T. S. Eliot, which are inscribed on his tomb in Westminster Abbey, "The communication of the dead is tongued with a fire beyond the language of the living."

Inevitably, the young men and women who are about to face the world will find disappointment and disillusionment in store for them. They will be inclined to agree with the witty sceptic who suggested that the vast astronomical distances may be God's quarantine precautions: they prevent the infection of a fallen species from spreading.

Let me now come to the second function of education—enriching the character. What we need today more than anything else is moral leadership—founded on courage, intellectual integrity and a sense of values.

As Sir James Barrie said in his address to a famous Scottish university, "Courage goes all the way". We are surrounded by too many persons who are willing to compromise and

temporize. We have in our midst far too many "boneless wonders". With such men, expediency is all. A man who has the courage never to submit or yield is like a rock in the wilderness of shifting sands.

In India today there are shortages of many commodities, but nothing is so scarce as intellectual integrity. Closer contact with the world will convince you that intellectual integrity is a much rarer quality than financial integrity. The treason of the intellectual consists in his not speaking out loud and clear for the values that he, by his vision and the very nature of his personality, holds sacred. What is needed is the resolute courage to stand up and be counted in support of a view which is not popular. Everyone finds it easy to swim with the tide. The great scientist G. H. Hardy said, "It is never worth a first class man's time to express a majority opinion. By definition, there are plenty of others to do that."

There is no replacement for a sense of values. As Einstein observed, "It is essential that the student acquire an understanding of and a lively feeling for values. He must acquire a vivid sense of the beautiful and of the morally good. Otherwise he—with his specialized knowledge—more closely resembles a well-trained dog than a harmoniously developed person." These are pregnant words. They do not exaggerate the importance of a sense of values in your future life.

A nation cannot live by the gross national product alone. The quality of life is far more important. In a free democracy like ours the quality of life is to a large extent determined by the availability of the basic human rights and civil liberties, which are placed in the chapter on Fundamental Rights in our Constitution. I have no doubt that as the years go by, you will become more and more conscious of how far-sighted our constitution-makers were in guaranteeing these fundamental rights to our people, because without them the quality of life would be gravely impaired. We are quite right in making constant endeavours to raise the standard of living of our people. But the standard of life is even more significant than the standard of living. If we lose our sensitivity towards the quality of life, it can only mean that while our knowledge increases, our ignorance does not diminish.

A sense of values will enable you to find happiness within yourself and joy in the most ordinary of things which we often pass by unseeing. As Robert Louis Stevenson said in "The Celestial Surgeon"—

> *"If beams from happy human eyes*
> *Have moved me not; if morning skies,*
> *Books, and my food, and summer rain*
> *Knocked on my sullen heart in vain:—*
> *Lord, Thy most pointed pleasure take*
> *And stab my spirit broad awake."*

To those of you who are familiar with the immortal heritage of India, the importance of a sense of values will need no elaboration. R. W. Emerson, who knew the literature of a dozen countries, observed that the writings of ancient India, including the *Upanishads* from which some extracts have been read out to you by the Vice-Chancellor, represent the summit of human thought. The knowledge of our old sages was intuitive. The other type of knowledge which is acquired from teachers and from books is repetitive, imitative, derivative.

After decades of intensive research, science has come to certain conclusions which the intuitive seers of India had already perceived 4,000 years ago. For example, the ancient *Rishis* had taught the basic truth that a Spirit or Immanent Principle, supreme and unchanging, pervades the entire universe, and the material world — being merely a manifestation of that Spirit — can never be explained merely in material terms; that all matter is nothing but energy; that inorganic matter is anything but inert and there are inexplicable points of contact between the living and the non-living; and that there is a unity underlying the entire creation. Recent scientific advances illuminate this verity. Likewise, what our old sages said about *Brahman* or the Ultimate Reality seems to coincide with what our greatest scientists of today think regarding the baffling nature of matter. In the words of Sir James Jeans, the stream of modern knowledge is heading towards a non-mechanical reality. If you have in parallel columns some quotations from our ancient classics and from the findings of

modern science, you will be amazed at their correspondence.* The farther science advances, the closer it comes to *Vedanta.* Such is our marvellous heritage, and yet we turn so seldom to it, being absorbed in passing trivialities.

Galbraith has remarked upon the contrast between the character and outlook of the poor in India and the poor in other countries. Talking of the inner strength of the Indian masses, he observed that there is a "richness in their poverty". The inner strength of our people which enables them to be dignified and to hold their heads high despite their adversity is the result of our age-old tradition of spiritual values. Today there is a definite risk of our losing that richness, while failing, at the same time, to shed poverty.

There are periods in world history which are characterized by a loss of the sense of values, and the times we live in are pre-eminently such an age. All our troubles may be summed up in three lines (if I may quote T. S. Eliot again)—

"Where is the Life we have lost in living?
Where is the wisdom we have lost in knowledge?
Where is the knowledge we have lost in information?"

At various recent convocations, students have been known to say bluntly that they want jobs and not degrees. I understand your problem and sympathize with your predicament. But do not forget that problems of poverty and unemployment cannot be solved either by aspirations or by slogans. They are never solved by purblind ideology or by opaque ignorance masquerading as progressive politics. They can be solved—and other nations have solved them—by realistic and pragmatic economic policies which can harness the immeasurable reservoir of the people's faith and response, energy and enterprise.

My gratitude to your University for having enabled me to be with you this afternoon and to dream once more that I am young.

* See the author's *India's Priceless Heritage,* 4th Edition, 1983, Bharatiya Vidya Bhavan.

Work—the prerogative of intelligence

(Convocation Address, The Karnataka University, Dharwar, February 2, 1974)

The multiplication of universities and colleges has hardly kept pace with the insatiable needs of the world's most populous democracy. By and large, our educational system has not been adequate for the task of turning out a sufficient number of young leaders who can lift the country out of the polluted waters of our public life and the slime and sludge of a corrupted economy.

The first objective of higher education should be to turn out integrated personalities in whom have been inculcated noble ideals. As Alfred North Whitehead said, "The vigour of civilized societies is preserved by the widespread sense that high aims are worthwhile. Vigorous societies harbour a certain extravagance of objectives, so that men wander beyond the safe provision of personal gratifications." On the university campus we must stress the importance of individual self-fulfilment but not self-indulgence, group cohesiveness but not group jingoism, work and achievement but not power and acquisitiveness for their own sake.

All growth depends upon energetic activity. There can be no development without effort, and effort means work. Work is not a curse to be kept at bay by holidays and *bandhs**; it is the prerogative of intelligence and the only instrument for national advancement. The country can do with dirtier fingernails and cleaner minds.

Your education has been in vain if it has not fostered in you the habit of clear, independent thinking. There are well-dressed foolish ideas, just as there are well-dressed fools, and the discerning man must be able to recognize them as such. As Bertrand Russell observed, "There is no nonsense so arrant that it cannot be made the creed of the vast majority by adequate governmental action. Man is a credulous animal and

* Attempts by militant workers to paralyze life in a city.

must believe something; in the absence of good grounds for belief, he will be satisfied with bad ones."

Without clarity of thought and readiness to admit our mistakes, it would be impossible to solve our economic problems. "A man," said Lin Yutang, "who has an ulcered stomach spends all his thoughts on his stomach, so a society with a sick and aching economy is forever pre-occupied with thoughts of economics." If eager boys and girls are not to be thrown on the scrap-heap of the unemployed, it is imperative that we stop our idéological incursions into the higher forms of irrationality. If we cannot have economic policies that make for plenty, let us at least have policies that make sense. It is so sad to find the anguished cry still going up in India, "Oh! God! that bread should be so dear, and flesh and blood so cheap!"

A university campus is the one place where the virtues of discipline and non-violence should be written as with a sunbeam on every student's mind.

We need much more of the spirit of moderation. Learned Hand, one of the greatest judges of the century, defined the spirit of moderation as "the temper which does not press a partisan advantage to its bitter end, which can understand and will respect the other side, and which feels a unity between all citizens." This is in contradistinction to the spirit of fanaticism which, said George Santayana, consists in redoubling your effort when you have forgotten your aim. Democracy depends upon habits of consent and compromise which are attributes only of mature political societies. The lawful government by the majority, under the rule of abiding law, and with freedom of opposition and dissent, is, both geographically and historically, an exceptional human achievement rather than the normal way of organizing nations. Where the spirit of moderation does not prevail, society degenerates into divisions and hatred replaces goodwill.

When we live in a democracy, we live in hazard. There is no amenable god in it, no particular concern or particular mercy. Democracy involves the cooperation of all perceptive citizens in the active work of running the country. It means payment

to the state, not only in taxes but in time and in thought. In Daniel Webster's memorable words in the U.S. Senate in March 1834, "Nothing will ruin the country if the people themselves will undertake its safety; and nothing can save it if they leave that safety in any hands but their own."

When new dangerous tremors are working their way through the subsoil of our national life, it is only the character and dedication of the young generation that can ensure the survival of freedom. Always keep before your mind's eye Buddha's last words to his disciples: "Look not for refuge to anyone besides yourselves." These words contain a world of timeless wisdom.

Obedience to the unenforceable

(Convocation Address,
The Xavier Labour Relations Institute,
Jamshedpur, February 29, 1980)

I am speaking today in a State where one of the greatest civilizations known to history once flourished. In the age of Emperor Ashoka, Pataliputra blossomed where modern Patna is located today. The civilization was great because it rested on certain enduring principles—compassion by the strong towards the weak and the suppression of immediate gratification for the more rewarding goals of national glory and progress.

It is important that citizens must obey the law. It is even more important that citizens must obey the high standards of decency which are not enforced by the law but are the hallmark of a truly civilized and mature democracy. Sir Thomas Taylor of Aberdeen University summed up the position in a few memorable sentences. As he put it, beyond the sphere of duty which is legally enforceable there is a vast range of significant behaviour in which the law does not and ought not to intervene. This feeling of *obedience to the unenforceable* is the very opposite of the attitude that whatever is technically possible is allowable. This power of self-discipline is the very opposite of the fatal arrogance, which asserts, whether in government, science, industry or personal behaviour, that whatever is technically possible is licit. All through history, men have needed it to preserve them from the temper which hardens the heart and perverts the understanding.

Such obedience to the unenforceable is, by definition, not easy to practise or inculcate, particularly in an age characterized by escalating violence, intemperate thirst for power, and social and ideological conflicts. It is specially difficult in industrial relations.

It will be a long time before such standards of mature public conduct prevail in India. So far from having learnt the value of obedience to the unenforceable, we have a growing tendency not to show obedience even to the enforceable laws.

Maintenance of standards of decency dictated by a high moral sense is impossible unless the people have a sense of discipline. A democracy without discipline is a democracy without a future. Undisciplined trade unionism is as dangerous as undisciplined capitalism; and undisciplined demagogy is as dangerous as undisciplined student power.

It is a painful truth that in labour relations what is claimed by certain unions is not freedom but licence. When freedom degenerates into licence, people resort even to means prohibited by law in their endeavour to secure coveted objectives. In the year 1979, 43 million man-days were lost in India on account of strikes—43 million man-days' loss to society's detriment, resulting in a fall in the gross national product and an increase in inflation. The workers themselves have nothing to gain, in the long run, by such irresponsible leadership.

The question whether in a free democracy strikes can be banned is of utmost importance, because it exemplifies the distinction between a democracy which has just attained majority and a mature democracy which is rich in traditions and in standards of public behaviour. There were long periods in our country's hoary history when there were very few laws, but the people practised the ideal of obedience to the unenforceable. In India, for generations people lived without a government. There was no central government, not even an effective regional government, but life went on. The nation had a certain moral depth and knew how to behave.

Let us now consider specifically the right to strike and the moral validity of a law banning strikes. The basic question is whether a government which is concerned with the interests of the working classes can pass a law preventing the exercise of the right to strike. The most significant fact is that in countries which represent the dictatorship of the proletariat, where the working classes themselves are supposed to be in power, strikes are totally and absolutely banned. In communist countries people inciting or taking part in strikes are promptly imprisoned or otherwise removed. This should make you pause and ponder. If strikes are banned in states where the workers are supposed

to be in the saddle, surely there is some wisdom behind the view that a handful of individuals cannot, for their selfish gain, hold the whole society to ransom.

Physical violence and strong-arm tactics are still practised by irresponsible trade union leaders and their followers. Such tactics are the relic of a bygone, semi-civilized age. William the Conqueror introduced in England the method of trial called "Ordeal by battle". That mode of trial was perfectly simple. The plaintiff and the defendant in a civil suit, or the prosecutor and the accused in a criminal proceeding, fought each other. Both parties to the litigation were required to be engaged in physical combat. Only women and the Church were permitted to appear by their champions; and the champion was the precursor of the modern advocate. It was assumed that in such physical combat God would help that party which was in the right. The party who was beaten was pronounced to be guilty, and the party who won was declared to be innocent and to have justice on his side. The method of employing an "advocate" to appear in place of the litigant was extended later from priests and women to other categories of litigants. In the thirteenth century the most famous "advocate" was a gladiator called William Graham. It is an interesting comment on the eternal spirit of private enterprise that a businessman soon employed William Graham on a good salary and then he let out, for a certain fee per fight, Graham's services to any litigant. Graham was a most successful advocate. When he was engaged by any party, the case usually went uncontested!

This form of trial fell into disuse, but it remained open under the law to litigants in England until the nineteenth century. It was in 1818 that a man convicted of murder went in appeal and his counsel in the appellate court claimed for his client the right to challenge the prosecutor to physical combat. Lord Ellenborough, the Chief Justice, had no option but to find that such a right existed. It was this case which led to the abolition in 1819 of the antiquated right to trial by battle.

The point I am making for your consideration is this. If all civil matters can be decided by a court of law, if all criminal matters can be decided, equally satisfactorily, by a court of

law, why can industrial disputes not be decided in industrial courts or tribunals—instead of being sought to be decided by muscle power, by physical force, by brutal violence? I am all in favour of a fair deal for workers. But a fair deal can undoubtedly be meted out to workers by an impartial industrial tribunal or adjudicator.

The economic situation in India is so disturbing that as a temporary measure, all strikes and lock-outs, and all other modes of action savouring of physical force and coercion, either on the part of labour or on the part of management, should be totally banned by law in every industry for a period of at least two years.

India is too poor a country to lose millions of man-days every year on account of strikes. You must remember that in organized industry we are paying unskilled workers in places like Bombay a wage which puts them among the five per cent top wage-earners in India. There are companies in big cities where peons get more than qualified physicians and lecturers in universities.

In those countries where people are mature enough to practise obedience to the unenforceable, there is no need for a law to ban strikes or the use of physical force in industrial disputes. For example, in Switzerland there is no militant trade unionism. In Japan the worker, even during the period of strike, keeps on working—only a band round his arm indicates that he is "on strike" though he puts in a full day's work. But in countries where self-discipline and self-restraint do not prevail and where the economic miseries of the people may one day result in a violent explosion, the law has to step in and make the machinery of tribunals compulsory in all industrial cases, exactly as adjudication by courts is made compulsory in all civil and criminal cases.

There is no hope whatever of improving the lot of the working classes, both in the cities and in the rural areas, and at the same time of checking inflation, unless and until we attain a sustained level of increased production all round. Industrial peace alone can lead to fast economic growth, and, as I am never tired of repeating, without economic growth there cannot be social justice in a poor country like India.

3

THE PEOPLE – THE ONLY KEEPERS OF FREEDOM

True gains of the Emergency

While the Emergency lasted, there was widespread governmental propaganda extolling the "true gains" of the Emergency which was virtually depicted as a great national blessing. The last significant act of the outgoing government was to lift the Emergency on March 20, 1977.

(Press Release, March 21, 1977)

History will record that the true gains of the Emergency have been the unification of the opposition, the sharp awakening of the political conscience of the nation, and the dawn of the realization among the people that they are the only keepers of the Constitution. The people paid a heavy price during the Emergency, but at the polls they exacted an equally heavy price from its authors.

The lifting of the Emergency, after the fateful evening of the 20th, is calculated to ensure that the past beneficiaries of the abrogation of the rule of law will not become its future victims.

One of the first steps of the next government must be to ensure that arbitrary power will never again wear the garb of constitutionalism.

The tasks before a free people

The elections to the Lok Sabha in March 1977 resulted in overwhelming defeat of the Congress. India had a rebirth of freedom.

(Public Address in Bombay, April 13, 1977, and "Open Letter to the Prime Minister", *The Illustrated Weekly of India,* April 17, 1977)

The impossible happened; and the inevitable did not happen. The triumph of the Janata-CFD party must have rung the bells of heaven the wildest peal for years. Reason, that torch of smoky pine, anticipated results which hovered between narrow victory and narrow defeat for the Congress. The difference between the expectation and the reality was the difference between a tremor and an earthquake, between a drizzle and a hurricane.

The last parliamentary election in India was one of the most significant in the entire history of freedom. At one stroke it doubled the number of free people on earth. In the words of Bernard Levin, India voted in a manner which put ancient and sophisticated democracies to shame.

The electorate's verdict has once again proved that to the soul of India, sacrifice appeals more than success—the returned candidates were mostly those who had suffered and sacrificed for the good of the country. Notably, the "illiterate intelligence" of the masses brought about a result which the "educated incapacity" of the intelligentsia could not foresee.

A free nation can be stifled by indigenous autocrats only through its own apathy and folly—apart from brute military force. An authoritarian regime is only as puissant as the sycophants and the time-servers, the cringing and the craven, will make it. No human being can be more powerful than his henchmen will allow him to be. History will apportion the blame and the responsibility among a wide spectrum of the elected representatives who betrayed their trust.

Jawaharlal Nehru's description of the condition of India under British domination must have come home with the atrocities of the Emergency to countless people:

> "We seemed to be helpless in the grip of some all-powerful monster; our limbs were paralysed, our minds deadened.... The dominant impulse in India was that of fear—pervasive, oppressing, strangling fear; fear of the army, the police, the widespread secret service, fear of the official class; fear of laws to suppress and of prison."

Fear, born of terror, was more acute—particularly among the innocent—during the twenty months of the Emergency than it was during the two centuries of British rule.

The first act of the liberated people should be to thank, from the depths of their souls, whatever Higher Forces they believe in—for the deliverance.

> *"Above blind fate and the antagonist powers*
> *Moveless there stands a high unchanging Will;*
> *To its omnipotence leave thy work's result.*
> *All things shall change in God's transfiguring hour."*

Human propensity to err is the favourite instrument of Providence for achieving its beneficent designs. Hitler, despite his super-efficient organization, attacks Russia instead of invading Britain—and it is the beginning of the end of the engulfing night. Nixon, notwithstanding his unsurpassed political cunning, tapes his own misdeeds—and the United States enters a brighter phase. The Indian autocracy, although armed with an all-powerful and all-pervasive secret intelligence force, calls for elections at a time of seething discontent simmering under the surface—and India secures a fresh lease of freedom.

Next, since public memory is so alarmingly short, let us reiterate our gratitude to the men who suffered in diverse ways and whose sacrifices made the restoration of freedom possible. The first name which springs to anyone's mind is that of Jayaprakash Narayan. Not since the time of Gandhiji has moral force—personified by a frail invalid—triumphed so

spectacularly over the forces of evil. He changed decisively the course of history. One life transformed the destiny of 620 millions. His epoch-making work must be carried on and the process of public education must never cease. Others will have to continue to propagate the great values which Jayaprakash has taught the nation—a lesson which our people may not always remember but which they will never wholly forget.

There were of course countless others,—prominent figures as well as the humble and nameless who will never be known to the roll-call of honour. They were the ones who withstood the hundred thousand petty tyrants that mushroomed all over the country during the Emergency.

William Makepeace Thackeray observed in *Pendennis:* "Men serve women on their knees. When they rise, they go away." It is the same with our electorate. They love and worship their leaders. But when the spell is broken, they unfailingly transfer their allegiance elsewhere. In history there are few more telling examples of this truth than the difference between the results of the 1971 and the 1977 elections.

Today the people are in a mood which comes rarely in the life of a country. They are looking forward, starry-eyed, to a new direction, a new era, a new life. It is time not merely for a new budget or a new licensing policy or a new price structure. It is the moment for shaping and moulding a new society, for giving a new and clear orientation to the nation.

Although we developed highly sophisticated technical skills, we basically remained a feudal and caste-ridden society. A deep and sudden realization dawned on the people last month which made their vote cut across the immemorial feudal and caste lines. The election could be made the matrix of a reborn nation.

The mood of the people today clearly marks a transition from the feudal age to the modern age. The outdated values of feudalism—birth, wealth, position and power—have been drastically eroded, and the age of the common man has begun. This is the golden moment to transform our caste-ridden society into a modern society.

Our people take their morals and their mores from their leaders. What can dynamic leadership, imbued with vision and

understanding, with knowledge and dedication, not do for this country at this historic juncture? We have in Shri Morarji Desai a Prime Minister who is a firm believer in moral values and high principles, and a Cabinet with vast talents and high administrative competence. All the auguries are auspicious for tackling the daunting tasks.

The first task is to have leadership at all levels—from the Prime Minister's to the panchayat's. True leadership is the exact opposite of the concentration of all power and decision-making authority in one individual. To be a true leader is to unleash the full power of the organization and to release the potential and energy in the rank and file by means of personal impact. Given selfless and dedicated leadership at this juncture, the objective, in the Janata Party Manifesto, of removing destitution within ten years can be achieved. We have to motivate the people so that they put the national interest above the sectional interest. It would be a tragedy if, having regained our freedom, we do not use it wisely and well.

The crying need of the hour is self-discipline and self-restraint. During the post-war period, trade unions in Germany voluntarily applied a wage-freeze on themselves, on condition that industry ploughed back its profits to increase the output and create further employment. The consequence of this self-imposed wage-freeze was more and more investment, resulting in more and more employment. Real wages per person were steady during this recovery period, but real wages per family increased because of more employment. In a country where all the groups function harmoniously, the results are fantastically gratifying—totally out of proportion to the inputs. Germany and Japan are examples of the synergistic effect of such harmonious co-operation. Great Britain and Italy serve as warnings of the consequences of its absence.

Plato thought poorly of democracy because it always degenerated into mobocracy. On the other hand, Gandhiji had great faith in the masses and believed that given the right leadership they were capable of self-restraint and self-discipline. Let us so conduct ourselves that we prove Gandhiji right and Plato wrong.

At the Centre we must establish Government of India Limited—limited not in responsibility, but limited by the rule of law, by the discipline of the Constitution, and limited in its capacity to release an unending torrent of ill-digested laws on the people. The last government treated the Constitution of India as its private property and dealt with Indian law as its personal backyard.

One of the primary duties is obviously to undo the mischief perpetrated by the 42nd Amendment—that monstrous outrage on the Constitution. Our original Constitution provided for stability without stagnation and growth without destruction of human values. The recent amendments have only achieved stagnation without stability and destruction of human values without growth.

The government need not worry about getting a two-thirds majority in both the Houses of Parliament to nullify the worst features of the 42nd Amendment. The Supreme Court can do the job equally effectively in appropriate proceedings taken by a citizen.*

The members of the last Parliament, after taking the oath of true faith and allegiance to the Constitution, had no compunction in altering or destroying its basic structure. The members of the present Parliament, who took the pledge at Rajghat on March 24, 1977, "to uphold the inalienable rights to life and liberty of the citizens of our republic", cannot fulfil the pledge unless they are prepared to accept the supremacy of the fundamental rights in the Constitution. It is not the M.P.s, dressed in brief authority, who are supreme. It is the Constitution which is supreme. It is the eternal human freedoms which are supreme. It is the people who are supreme and it is they who have given the Constitution unto themselves.

It is to be hoped that the present government will pass such laws and take such executive action as are not meant merely to deal with the difficulties of the moment but calculated to ensure the good of the country in the long years ahead.

* In 1980 the Supreme Court struck down the 42nd Amendment in the *Minerva Mills* case. See *post*, pp. 207-17.

Though the present electoral system has brought the Janata Party to power, the party would be rendering a lasting national service by effecting electoral reform. Despite its shortcomings, proportional representation would, on the whole, be more just and fair than the present system of "first past the post".

The Janata Party Manifesto is admirably drafted. With the amount of zeal and dedication that we have in the Cabinet today, there is every hope that the Manifesto will not remain a historic parchment in a glass case but will be translated into action with all convenient speed.

There can be no two opinions on the point that the topmost priority must be given to amelioration of the lot of the 40 per cent who still live below the minimum subsistence line. Our first concern must be to look after the weakest—the man who is bowed by the weight of centuries, stolid and stunned, "dead to rapture and despair, a thing that grieves not and that never hopes".

There are at least 40 million unemployed today—in a country which cannot and does not afford any social benefits.

Poverty is cruel, but it is curable. The only known cure is economic pragmatism instead of woolly ideology. In the field of economics the tree of ideology has never borne any fruit. We have countless chances for development. Opportunities multiply when they are seized; they die when neglected.

We have barely tapped our immeasurable potential for growth. Immense man-power, superb skills and enterprise are to India what oil is to the Middle East. The only difference is that the oil will be depleted one day, but our human resources will never be.

At least 250 million of our citizens are contributors to the national product. There is one way, and one way only, in which India can banish poverty, and that is by putting to the maximum productive use the 2,000 million man-hours which fleet over India every day, never to come again. To every economic policy and legislation we must apply the acid test—how far will it bend the talent, energy and time of our people to fruitful ends and how far will it dissipate them in coping with legal inanities and a bumbling bureaucracy.

"Much to cast down, much to build, much to restore;
Let the work not delay, time and the arm not waste;
Let the clay be dug from the pit, let the saw cut the stone;
Let the fire not be quenched in the forge."

Irrigation has been sadly neglected during the last thirty years. On an average, India receives 3,000 million acre-feet rainfall in a year,—sufficient to submerge the entire country in a 45 feet deep layer of water. The total area under cultivation was about 422 million acres in 1975-76. Of this area, only about 111 million acres (or 26.3 per cent) was provided with irrigational facilities. At the rate of extension of irrigational facilities achieved in the last fifteen years, we shall not be able to bring even half the arable area under irrigation till 2007 A.D.

Three-fourths of the total flow of our rivers is wastefully emptied into the seas. Out of our groundwater resources of an estimated potential of 180 million acre-feet, not even half is being utilized. How much greater would be our agricultural output, with a reduction in prices on account of economies of scale, if irrigation plans were vigorously pursued.

In the Fifth Plan only 0.83 per cent of the total public sector outlay is earmarked for roads, and even out of this paltry percentage three-fourths is intended to cover those road projects which have spilled over from the Fourth Plan. Few countries of the world are so poor in market roads. Road construction is one of the best ways to generate employment and to stimulate agricultural output by opening up enormous new markets.

The country can never prosper or be saved through the efforts of only ministers and civil servants. The people must be associated at all stages with the formulation and implementation of policies. We can have a truly participating democracy for the first time in India. Under the last regime, the government and the people virtually became two hostile armed camps. Now we can have an exciting joint venture between the government and the people.

The very enormity and variety of the challenges facing the country are such as to touch the least tender to tears and the most incredulous to prayer. Shall we maintain discipline—or shall we witness revival of the barbarous *bandhs** when government ceased to govern, mobocracy displaced democracy, and cities were paralyzed by groups of men who regarded themselves as above the law? Shall we increase production, create national wealth and settle industrial disputes in the forums provided by the law—or shall we abuse our regained freedom by nine *morchas*† a day?

The nation is mature enough, and the Prime Minister and his colleagues are experienced enough, to ensure the rule of law while providing liberty under law. Those who talked of chaos as the alternative to authoritarianism overestimated their own calibre and underestimated the intelligence of our people.

The government should have the fullest co-operation from all quarters in the epochal demonstration—watched by the whole civilized world—that liberty is not an "optional extra" in a democracy, that human rights are not a luxury intended merely for the elite and the affluent, and that our people, poor and downtrodden, are as intensely committed to the free way of life as the richest under the sun.

* Attempts by militant workers to paralyze life in a city.
† Sizable processions in the streets, to ventilate a grievance.

Has the Constitution failed?

(*The Illustrated Weekly of India,* **September 16, 1979**)

The Constituent Assembly began its deliberations on December 9, 1946. On that historic day, envisioning the constitutional structure of the world's newest and largest democracy, Sachchidananda Sinha, Provisional Chairman of the Constituent Assembly, quoted in his inaugural address the words of Joseph Story:

> "The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful as well as useful; its arrangements are full of wisdom and order; and its defences are impregnable from without. It has been reared for immortality, if the work of man may justly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, THE PEOPLE. Republics are created — these are the words which I commend to you for your consideration — by the virtue, public spirit and intelligence of the citizens. They fall when the wise are banished from the public councils because they dare to be honest, and the profligate are rewarded because they flatter the people in order to betray them."

These words were truly prophetic. The foundations of the Constitution have been shaken by the *folly* of the people, the *corruption* of our politicians and the *negligence* of the elite. In just thirty years, we have reduced the noble processes of our Constitution to the level of a carnival of claptrap, cowardice and chicanery.

Politics has never been a particularly edifying activity. Daniel Webster said that the unvarying tendency of the mad strife of politics "is to belittle greatness and corrupt goodness. It contracts the mind and hardens the heart." John Dewey observed that, "while saints are engaged in introspection, burly sinners run the world".

Nobody expects politics to be synonymous with ethics. But the unusual predicament facing India is that an unacceptably large percentage of the 5,000 members of Parliament and the State legislatures have sunk to such a level that to call their manoeuvres a rat race for winning elections and personal power would be defamatory of rats.

Hilaire Belloc, after spending a term in the House of Commons, wrote: "The standard of intellect in politics is so low that men of moderate mental capacity have to stoop in order to reach it." Indian democracy has reached its nadir because in our average politician we have the sordid amalgam of lack of intellect with lack of character and lack of knowledge.

At this moment, when the nation is standing on the escalator of anarchy and corruption, right-minded citizens cannot afford to stand frozen in disgust and dismay. We cannot merely look upon the political developments in sorrow and upon our politicians in anger. The problem facing the country has to be solved without delay—we are racing against time. A problem avoided turns into a crisis; and the crisis not mastered can turn into a disaster further down the road.

Honest and knowledgeable members of our society should reverse the decision, which they have adhered to so long, of opting out of the democratic process. They must devote themselves to the task of educating public opinion and the younger among them should stand for election in large numbers.

The ill-informed are often confused about three distinct concepts which have wholly different connotations—equality, equality before the law and equal opportunity. Equality before the law is the very foundation of a republic. Equal opportunity is the very foundation of social justice. But equality is achieved only in the graveyard.

Granted equality before the law and equal opportunity, men will attain different positions in life, depending on their intelligence, their character, their capacity to work hard and to take risks. Therefore, equality has never been achieved at any time in any progressive country, even where equality before the law and equal opportunity have existed.

Every democracy must needs have an aristocracy of talent, of knowledge and of character. It is this aristocracy which must take to public life, however distasteful it may be, if democracy is to survive in India. We must go all out to grant the highest recognition to ability, knowledge and integrity. Ancient India was great because it was as enamoured of learning as modern India is of petty politics.

I should like to reaffirm my firm conviction that it is not the Constitution which has failed the people but it is our chosen representatives who have failed the Constitution. Dr. Ambedkar poignantly remarked in the Constituent Assembly that, if the Constitution which was given by the people unto themselves in November 1949 did not work satisfactorily at any future time, we would have to say, not that the Constitution had failed, but that man was vile.

Our Constitution was framed on the basis that our citizens, including the best, would be willing to take a continuous and considered part in public life. If, however, the thoughtful and the selfless fail the country at this juncture, the only other option available would be to have a second look at the type of democratic setup which is embodied in our Constitution. The question is: How does one get a government of experts in place of the ubiquitous government of professional politicians?

There should be a nationwide debate in depth as to how we can meet the crisis facing the country. To shut our eyes to the gravity of the situation would only be to invite the forces of authoritarianism of the type which overran the country not so long ago.

The peacock must not be replaced as the national bird by the ostrich.

The future of democracy in India

(*Bhai Parmanand Memorial Lecture,*
New Delhi, November 27, 1979)

What a sad contrast between Sri Aurobindo's vision ("Mother India is not a piece of earth; she is a Power, a Godhead") and the cesspool of degradation to which professional politicians have reduced this country!

Sri Aurobindo predicted that the sun of India's greatness would rise and its light would overflow India, overflow Asia and spread throughout the world. This was the vision of Sri Aurobindo, a seer in the true sense of the word. So, when we are faced with troubles for the moment and the path seems to be engulfed in darkness, let us not lose faith in ourselves or lose sight of the rare destiny we have to fulfil.

By voting ignorant professional politicians to power, we have kept a singularly gifted and enterprising nation in the ranks of the poorest on earth. Sixty-seven per cent of our people are still illiterate; and if the calibre of our politicians does not improve, India will contain 53 per cent of the world's illiterates by the year 2000 A.D. Many politicians seem to have a vested interest in illiteracy — their survival as public figures depends upon the continuation of the forces of ignorance. It appears cynical but it is true that for portly politicians, goodly in girth, poverty is good business: they talk continually about *garibi** without having the will, the expertise or the imagination to eradicate it.

The moral crisis is writ large on the entire political scene. In the fifties we had many eminent men in public life who were every inch a gentleman. In the sixties we had many public figures who were every alternate inch a gentleman. Unfortunately, in the seventies we have an unacceptably large number of politicians who are no inch a gentleman. The noble processes of our Constitution have been trivialized by the power-holders,

* Poverty.

the power-seekers and the power-brokers in our capital cities. Elections have been reduced to a horse race by the contesting politicians — the difference being that the horse is highly trained.

When we look around India today we can hardly recognize it to be the same country in which a dozen different civilizations of incredible nobility flourished over the last fifty centuries. Ralph Waldo Emerson, talking of the Upanishads and the Vedas, said that having read them, he could not put them away. "They haunt me. In them I have found eternal compensation, unfathomable power, unbroken peace".

As we enter the new decade — the eighties — we have to realize the fundamental importance of four things.

First, the time has come when citizens must wrest the initiative from professional politicians and from political parties, and insist upon men of knowledge, vision and character being chosen as candidates for parliamentary and state elections. It is only such men who can give India the type of government it needs — a government which is strong without being authoritarian, and humane without being weak. Poverty can be eradicated only by experts in finance, production and marketing, and specialists in social engineering and deployment of resources. Singapore is a most striking example of how fast a nation can progress when its cabinet is composed of outstanding talent and probity.

The difference between a minister selected for his political cunning and a minister of high mental and moral calibre is the difference between a lightning-bug and lightning.

We have hardly an economic problem which would be beyond the capacity of a knowledgeable organizer with an iron will. A technocrat would never try to repeal the laws of economics — the futile exercise to which our Central and State Governments have been addicted so long. He would realize that development begins with people and not with goods. Only men of stature can evoke the response from the people, without which governmental plans turn to ashes.

Secondly, there is a deep-felt need for an intelligent and adequate organization of voters. There should be a Citizens' Council in every constituency, consisting of impartial non-

party individuals who would appraise the candidates and recommend the right candidates to the voters, and after the elections ensure that the candidate does not defect or otherwise disgrace himself and his constituents. The voters should unmistakably insist upon the right type of candidates, instead of allowing the political parties to palm off ignoramuses on them.

Thirdly, we must shed the divisive tendencies which split the votes on caste and sub-caste lines, and which are so devastating to our unity as a nation. One Indian is an intelligent human being; two Indians are a political group; three Indians are two political groups.

Fourthly, our people must cast off the shackles of political feudalism. The modern ruling class consists of the 5,000 members of Parliament and the State legislatures. It is pathetic to see the servile behaviour of our people towards ministers and legislators. When Jayaprakash Narayan talked of total revolution, he meant a total transformation of the spirit, which would enable the people to control the government instead of being dominated and dragooned by the government.

The average age of the members in the last Lok Sabha was 52 years and in the current Rajya Sabha it is 53.5 years, while the life expectancy in our country is only 47 years. By contrast, the average age in the U.S. House of Representatives as well as in the U.S. Senate is significantly lower than in our Parliament, although the average span of life in the United States is 74 years. Our republic would have a new lease of life when younger people, with well-equipped minds and with the ability to have a bright career outside politics, take to public life as a matter of national service.

"It is a funny thing about life," observed Somerset Maugham, "if you refuse to accept anything but the best, you often get it." This is equally true of democracy. If people refuse to accept any but the best citizens as candidates, it would usher in the golden age of our republic. Democracy gives, as life gives, what you ask of it. The following lines of Jessie B. Rittenhouse would be wholly apposite if democracy were substituted for Life:

"I bargained with Life for a penny,
And Life would pay no more,
However I begged at evening
When I counted my scanty store;

For Life is a just employer,
He gives you what you ask,
But once you have set the wages,
Why, you must bear the task.

I worked for a menial's hire,
Only to learn, dismayed,
That any wage I had asked of Life,
Life would have paid."

The great French thinker, Montesquieu, said in the eighteenth century: "The tyranny of a Prince in an oligarchy is not so dangerous to the public welfare as the apathy of a citizen in a democracy." A bad government is the inevitable consequence of an indifferent electorate. Politics will never be cleaner, and our economic future will never be brighter, unless and until our citizens are willing to give of themselves to the land which gave them birth.

Indian democracy — its problems and prospects

(*Dr. N. B. Parulekar Memorial Lecture,* **Pune, September 19, 1981**)

Prof. Irving Younger of the Cornell University suggested that our judges should evolve the doctrine that "no law is validly enacted unless legislators voting for it have read it." By this test 95 per cent of the laws passed by the Indian Parliament and the State legislatures would have to be invalidated.

The national conscience has to be aroused to such a degree that it will cease to tolerate falsehood and dishonesty in public life. Standards of ethics and decency in public life are less easy to enforce by law than by public opinion. Obedience to values — which is enforced not by the machinery of criminal justice but by the national ethos — is the ultimate guarantee of a clean public life. What India today badly needs, and sadly lacks, is not political leadership but moral leadership which can lead to a renaissance of true Indian culture.

Many young people have been saying that they could run the country much better than the old politicians who have *immatured* with age. It is difficult to believe that we are living in the same country which produced the galaxy of talent and character at the time when we gained our independence.

It is a vicious circle. Men of talent and integrity will not enter public life because of the filth and the stench; and yet public life cannot be cleansed unless men of talent and integrity enter it.

I have great hopes in our young men and women. To the youth of this country I would like to make an earnest appeal to enter public life and would commend for their consideration three maxims:

- You must not desert the ship because you cannot control the winds.

- It is better to try to do something and fail, rather than try to do nothing and succeed.
- For the rebirth of morality in Indian politics, the period of gestation will prove lengthy and the delivery promises to be painful, but you cannot dedicate your life to a greater cause.

If experts imbued with a spirit of dedication and wisdom were to be inducted into the cabinet and were to be allowed the requisite freedom of action, they could transform this country into one of the great economic powers. Disraeli said, "Money is not the measure of a man, but it is often the means of finding out how small he is". By this measure, our politicians must be among the smallest on earth. Our political scene presents an incredible army of pudding-headed mercenaries. We must somehow replace them by men of honour and knowledge.

Meeting the enemy

(*Sulakhani Devi Memorial Lecture,*
New Delhi, December 7, 1973)

If the Supreme Court had ruled in *Kesavananda*'s case (A.I.R. 1973 S.C. 1461) that Parliament's amending power extends to altering or destroying the basic structure or framework of the Constitution, we might have theoretically remained a democracy but the heart of the democratic process would have been stilled.

Abraham Lincoln said on his election as the President of the United States—

> "I have been selected to fill an important office for a brief period, and am now, in your eyes, invested with an influence which will soon pass away. But should my administration prove to be a very wicked one, or what is more probable, a very foolish one, if you, the people, are true to yourselves and the Constitution, there is but little harm I can do, thank God."

The majority of our legislators personify the arrogance of power—the exact opposite of the unfeigned humility of President Lincoln.

In place of the ancient four-fold caste system, we now have two sharply divided castes—the rulers and the ruled. The "higher" caste too often displays a dangerous blend of incompetence, unscrupulousness and plain wickedness.

The defences of our democracy may be impregnable from without, but they are vulnerable from within. Let us never forget the dictum of Pogo, the cartoonist, "We have met the enemy and it is we."

The citizen and the next election

(Public Address in Bombay, January 24, 1967)

An enterprise casts its accounts and takes stock at the end of its financial year. A democracy must do stocktaking at the time of elections when a new batch of lawmakers is to be put in power.

The bleak environment need not make us unduly despondent. Things have been difficult and disquieting at most times in human history. When Will Durant was asked what he thought of the world situation, he said, "The world situation is fouled up. It has always been fouled up. I see no reason for change."

Even great men have been proved by history to have been unduly despondent about the future. William Pitt bemoaned, "There is scarcely anything around us but ruin and despair." William Wilberforce would not get married because the future was so dark and unsettled. Even so strong and courageous a man as the Duke of Wellington said one day close to his death in 1852, "Thank God, I shall be spared from seeing the consummation of ruin that is gathering about us." And yet the decades which followed these gloomy predictions of Pitt, Wilberforce and Wellington saw Britain rise to the height of her glory.

As regards the party system, it is an evil, but it is doubtful whether abolition of the party system would not be a greater evil. Jeremy Bentham died in 1832 at the age of 84. His published works amount to ten million words and his unpublished manuscripts are estimated to run into another ten million words. Some of the most pregnant of his published words are the following: "Not having the honour to be the Pope, I have no pretentions to infallibility; not having the honour to belong to any party, I am under no promise never to become wiser." In Bentham's classic work, *Constitutional Code,* there is no provision for or reference to the party system. The party system takes grievous toll of a member's independence, individual judgment and freedom of action. But the system

does bring about coherence and unity of purpose in the actual working of democracy.

Man has been on the earth for two million years and during those aeons of existence human conduct has been actuated by emotions—*e.g.* the emotions of fear, envy, hatred, love, narrow and wide loyalties. By contrast, reason appeared on the scene less than 10,000 years ago. So, compared to our emotions, reason is a newly found toy. That is why our conduct is still prone to be governed by emotions rather than by reason. Regional and communal loyalties, personal and caste considerations, sway most electors.

The duty of the citizen is not merely to vote but to vote wisely. He must be guided by reason, and by reason alone. He must vote for the best man, irrespective of any other consideration and irrespective of the party label. The right man in the wrong party is any day preferable to the wrong man in the right party.

The time is gone when "Congress" was a word to conjure with. It is curious that the English language has not been too kind to the ruling party in India. The word "pro-gress" is almost the exact opposite of "con-gress".

Educating our masters

(Inaugural Address,
All India Conference of Citizens for Democracy,
New Delhi, April 13, 1974)

The whole object of the All India Conference of Citizens for Democracy, which is presided over by Shri Jayaprakash Narayan, one of the noblest sons of India, is to initiate a non-party organization which will restore the sense of values and the love of basic human freedoms which inspired the founding fathers of our Constitution.

The voice of a small minority is today mistaken to be the voice of the majority, simply because it is loud and vociferous, while the still, small voice of reason is not heard. So long as thinking men will not take the trouble to give public expression to their views, they should be reconciled to the thought of living under an administration of which the distinguishing feature is that it places "the lives of wise men at the mercy of fools".

Inactivity, partly due to fatalism which is our besetting national foible, has to be conquered. It is not enough that we believe in our national motto, "Truth shall prevail". Truth, no doubt, will ultimately prevail. But our paramount duty is to ensure that falsehood does not have too long an innings before the ultimate moment of truth arrives.

The situation cries aloud for taking all conceivable steps to inculcate the all-India outlook among our people. In every State on every important question a local policy prevails with those who are not trained to national views and whose actions embody what the Constitution was meant to end. Identity of views is not possible, but harmony of aims undoubtedly is.

In a democracy based on adult suffrage — which means the nose-counting method, the only way to achieve progress is to "educate our masters", to borrow the historic phrase of Disraeli. There must be a nationwide campaign to disseminate correct facts and right ideas among the public at large. The

best charity which one can do in India today is to carry knowledge to the people. As Abraham Lincoln rightly said, the people would be able to face any crisis, provided only the correct facts were made known to them. Men who believe in free enterprise must not be content merely to sell their goods, but their first attempt should be to sell their ideas and spread the values they cherish.

It seems doubtful whether in the immediate future we shall attain stability and rapid progress through the democratic set-up. However, what is more valuable and easier to save is the more distant future of this great nation. Years of intensive mass education will be needed if the standards of rationality and fair dealing, of social justice and individual freedom, which are enshrined in our Constitution, are to be bred in the bones of our young men and women who are in their formative years and to whom the future belongs.

4

INDIA – THE POTENTIAL AND THE REALITY

Economic growth with social justice

(*Shri Ram Memorial Lecture,*
New Delhi, December 10, 1969)

Our Constitution aimed at making India the land of opportunity; our politicians have converted it into a land of opportunism. They have made socialism the opiate of the people. "Socialism" has become a word comprehensive enough to cover the entire spectrum of economic folly – a plethora of harmful controls, periodic bouts of nationalization, and the pursuit of policies which ensure unemployment and economic retrogression.

Every thinking man in India today accepts without reservation the true socialistic objectives of economic development. True socialism means the subordination of private gain to public good. It means the investment of human and material resources in an imaginatively planned manner which can contribute to the vitality and progress of the whole nation, keep it in the mainstream of self-generating growth and development, raise the standard of living of the masses, and bring forth the maximum gifts of each for the fullest enjoyment of all. The translation of such socialism into action demands intellect and knowledge, character and dedication, of the highest order.

But there is the other type of socialism which is socialism on the cheap, which feeds on slogans and promises, and thrives on the gullibility of the people. Will Durant, after a lifelong study of various civilizations, summed up the lesson of history which has great significance for India: "Democracy is the most difficult of all forms of government, since it requires the

widest spread of intelligence, and we forgot to make ourselves intelligent when we made ourselves sovereign... A cynic remarked that 'you mustn't enthrone ignorance just because there is so much of it.'... It may be true, as Lincoln supposed, that 'you can't fool all the people all the time', but you can fool enough of them to rule a large country."

If the wrong type of socialism becomes the national policy, we may continue to dream of a higher standard of living but will never manage to underwrite our dream in terms of output. No amount of slogan-mongering or munificent promises can get over the basic law of economics,—you cannot divide more than you produce.

Any economic policy which on ideological grounds prevents the full development of job potential constitutes a sin against the nation. Is it in the national interest that the ranks of the hapless unemployed should keep on increasing or is it better that we keep our ideology in cold storage for some years to let the country develop and create sufficient wealth to go round?

As W. Arthur Lewis, the well-known Democratic Socialist, has observed in *The Theory of Economic Growth*:

> "The distribution of income raises peculiarly difficult problems for the less developed countries, in so far as they wish to combine equality with incentives and with a high level of savings. Economic growth demands that there shall be adequate differentials for skill, for hard work, for education, for risk bearing and for willingness to take responsibility...
>
> "The less developed countries have awakened into a century where everybody wishes to ride two horses simultaneously, the horse of economic equality, and the horse of economic development. The USSR has found that these two horses will not go in the same direction and has therefore abandoned one of them. Other less developed countries will have to make their own compromises."

The government's obsession with the theory of concentration of economic power has been carried to such absurd lengths that it is sought to deny facilities for expansion to an honest and socially responsible business house merely because

of its size. In other words, on ideological grounds, scarcity, poverty and unemployment are preferred to what is called "concentration of economic power." In reality, a single bureaucrat wields more economic power than the largest industrial group in the country.

"Concentration of economic power" is the empty slogan mouthed by politicians without reference to the realities of economic life. Mankind has reached a stage in its technological development when economies of scale render a certain amount of concentration unavoidable. Further, nature has not read art. 14 of our Constitution which enshrines the fundamental right to equality. Men are born with totally different capacities and character. The plain truth is that India would have never achieved its present state of industrial development without what is now glibly derided as concentration of economic power. What is to be deprecated is not concentration but anti-social or corrupt use of the opportunities given by concentration.

Recently, in England powerful trade unions submitted before the UK Monopolies Commission that they were in favour of amalgamations and mergers and of big corporations being allowed to grow bigger, because such corporations could offer better wages and better security for labour and could also benefit consumers since they could produce quality goods at cheaper prices because of economies of scale. This is a sound economic approach, and it is not the approach of capitalists but of trade unions and a labour government.

We are pricing ourselves out of world markets because of our irrational reluctance to let even honest business houses expand. It is about time we clear our minds of cant, in the historic phrase of Dr. Johnson. Cant is humbug which is on the lips of persons who know better but prefer to adopt publicly certain postures.

"Profit" and "property" are dirty words today and yet a little reflection would show that the profit motive is all pervading in human affairs, though the profit may take a variety of forms, monetary or non-monetary. The mistake lies in thinking that those who hunger for political profit or profit in the form of power are less dangerous to society than those who seek monetary profit.

The motive for reasonable profit can lead to economic development and create national wealth and this force should be harnessed by the government instead of being decried and dissipated. There must be a spirit of co-operation and understanding between the government and the business community. What is needed is not just a dialogue between the two but a meeting of minds.

Minority shareholding in public sector undertakings should be offered to the public so that the accounts of these undertakings may be in the hands of citizens and the market quotations of their shares would afford some indication of the economic and financial position of the undertakings.

Economic development has become such a complex subject and the problems facing the country are of such gigantic proportions that people will soon be disillusioned with democracy unless it results in rule by meritocracy. Michael Young defined meritocracy as I.Q. plus Effort. In a mediocracy on the other hand, the ingredients which define the successful mediocrat are common sense plus inertia. It makes all the difference to the progress of a republic whether government is by mediocracy or by meritocracy.

When Bacon said that "Knowledge is power", he meant it from the individual's standpoint and not from the national standpoint. A nation progresses gloriously when knowledge and power are combined in the same individuals. It faces a grave crisis when some have knowledge and others have power.

Socialism — its kernel and its shell

(Public Addresses delivered in 1972 in New Delhi, Bombay, Bangalore and Goa)

We live in a world of slogans where socialism has taken the place of the *mantras*[1] and the *shastras*,[2] the Ten Commandments and the Golden Mean. But just as a coin gets defaced and its engraving gets erased after it has been a long time in circulation, words like "socialism" get denuded of their true content after they have been in constant circulation. Socialism means different things to different people, and to some people it means no more and no less than cabinet rank.

There is the type of socialism which has built up the lucky countries of Europe and of the Third World. And there is also the other type of socialism which has brought down the less lucky countries like Indonesia under Sukarno and Ghana under Nkrumah.

The Preamble to our Constitution does not use the empty label "Socialist"[3] at all, but uses the meaningful words, "Justice, social, economic and political" and "Equality of status and of opportunity."

The wrong brand of socialism is extremely popular; in fact it is the fastest-selling brand of socialism today in India. The reason for its popularity is that it is so much easier in practice. This cheap and easy style of socialism mistakes *Amiri hatao*[4] for *Garibi hatao*[5]; it aims at levelling down and not levelling up; it is content to satisfy the pangs of envy when it cannot satisfy the pangs of hunger; and, since it cannot create income or wealth, it plans for poverty and equal distribution of misery.

[1] Expressions or formulae meant to be recited and supposed to have occult effect.

[2] Sacred books of Hinduism.

[3] The subsequent amendment of the Preamble, which inserted the word "Socialist", is unconstitutional. See *post*, "Reshaping the Constitution", pp. 195-98.

[4] Liquidation of wealth.

[5] Removal of poverty.

True socialism provides four significant measures of a country's development—an increase in the gross national product, availability of work, fair distribution of income and the quality of life. You must have all the four if you want economic growth with social justice. There would be no availability of work, no income to distribute, and the quality of life cannot be made less shoddy, unless and until we have a fast and sustained rise in the gross national product. Without it there can be no increase in gross national happiness.

If we followed the school of Old Economics, we would be content with mere increases in the gross national product. If we adopted the New Economics, we would insist on growth with social equality. But we have chosen "non-economics" where ideology reigns supreme, scarcities multiply and savings evaporate in inflation.

The vital point which is normally missed in political histrionics is that while it is possible, in a poor country like India, to have economic growth without social justice, it is impossible to have social justice without economic growth. "Economic Growth *for* Social Justice" would be a more rewarding slogan than *Garibi hatao.*

The concept of socialism gets distorted when one stubbornly adheres to state ownership as the only means of achieving the goal. You may adopt state ownership in areas where such ownership affords the only sure and safe launching pad; or you may tap the boundless reserves of the people's response and initiative, energy and endeavour, prosaically called "the private sector". The vital point to remember is that the public sector does not necessarily spell public good, and the private sector does not merely spell private gain.

Our scarce financial resources should not be wasted on ideological preferences which envisage a dichotomy between the public sector and the private sector. The government and the people should think of only one sector—the national sector. The line of demarcation should be between honest and efficient business on the one hand and dishonest and inefficient business on the other. Every effort must be made to encourage and expand the first and to condemn and constrict the second, irrespective of the question whether the enterprise is in the

public, private or joint sector. If the same standards of economy, efficiency and managerial competence and the same criterion of dedicated public service are applied to the public sector as well as to the private sector, we shall have achieved the greatest economic transformation of our time.

State ownership is to social justice what ritual is to religion and dogma to truth. State ownership and state control are the shells of socialism which were really intended to protect and promote the growth of the kernel; but rigid shells merely stunt its growth.

The fanatical devotion to nationalization as an end in itself and the confluence of all controls in the hands of the government made Galbraith observe that in the old days the principal enemies of public enterprises were those who disapproved of socialism; while now it is the socialists themselves.

Contrasting India with other underdeveloped countries, Galbraith further remarked that there is a richness in the poverty of Indians. Unfortunately, while there is richness in our poverty, there is poverty in our socialism.

Two great men whose birth centenary has been celebrated this year all over the world have expressed strong views against the monolithic state. Bertrand Russell said in a letter in 1964: "The danger to liberty involved in almost any form of socialism comes from the power of officials. If socialism is to permit freedom, powerful officials must somehow be curbed, for, if not, they will inherit all the powers of capitalists."

And Sri Aurobindo said: "We are now tending towards such an increase of organized state power as will either eliminate free independent effort altogether or leave it dwarfed and cowed into helplessness."

The elimination of poverty as a social problem is a formidable objective, but it is not an insurmountable one. We have abundant natural resources and all the man-power we need. Perhaps there is no other nation which has in such ample measure all the enterprise and skills needed to create national wealth, and which takes such deliberate and endless pains to restrict and hamper its creation.

Social justice is different from mere equality. Social justice demands that there should be adequate differentials for ability and other laudable qualities. Elimination of such differentials is the very negation of social justice—it is unfair to those who are denied the fruits of their industry, integrity and intellect; and it is equally unfair to the tens of millions whose hope will die within their hungry hutments, since in a democracy there can be no economic growth without such reasonable differentials.

The two greatest economic power-houses

(The Ahmedabad Management Association, February 12, 1967)

The Committee on Economic Development, which made a study of economic growth in the Latin American countries during the last fifteen years, reached the central conclusion that the most important factor in the economic development of Latin America had been the economic policy followed by each nation of that continent. Abundance or scarcity of natural resources, rates of population growth, the level of education and geographical conditions, have a strong impact on the economic environment; but more important than them all is the economic policy pursued by the government. This is as true of India as of any other country.

The six facets of governmental policy which have the strongest influence on the economic environment are—(*i*) monetary stability, (*ii*) fiscal policy, (*iii*) export policy, (*iv*) climate for free enterprise, (*v*) balance between agricultural and industrial development and (*vi*) the attitude, receptive or otherwise, towards foreign capital.

In terms of the above six criteria India serves as a warning, and not an example.

To talk of monetary stability in India is like talking about snakes in Iceland—the thing does not exist.

Since our government had taken adequate and sustained measures to ensure the decline and fall of the rupee, our currency had to be devalued on June 6, 1966. Devaluation was desirable and advisable, equitable and unavoidable. But thereafter we took the wrong turn at the crossroads and did not take the follow-up measures which would have resulted in devaluation lifting India out of the quagmire and which would have created prosperity out of prostration. "The diagnosis which pointed to the need for appendectomy in the form of devaluation was not wrong. The expectation that the surgeon would stay awake through the operation and not fall asleep with the scalpel in his hand, was".

Small wonder that there is frustration all round. Intelligent men are prone to get violent in their words; and the unintelligent tend to become violent in their deeds.

Even our planners have admitted that there is a vast imbalance in the Indian economy between agricultural and industrial development. This is the result of our government's preoccupation with steel and heavy industries which is so incessant that such plants are almost treated as the temples of a new materialistic faith. When Prof. Colin Clark was asked whether he favoured the building of more steel plants in India, he gave the memorable reply: "This is a problem in comparative religion."

The economy cannot possibly improve unless there is a new order of priorities. There is no mathematical calculus for economic engineering; but we would do well to advert to a few oft-repeated suggestions:

First, the realization must dawn on the men in power that our Plans and our laws are not for angels but for human beings. In the last analysis, economics is a matter of human nature and not a collection of nicely wrapped formulas ready to be applied to the ticklish and tangled problems which beset the country.

Secondly, the highest priority should be given to the task of maintaining price stability. No wiser principle can be commended to our government than the maxim that the economist or politician who is willing to trade away price stability for an expected higher rate of economic growth, may end up finding that he has lost both.

Thirdly, it will be impossible to hold the price line unless production increases with the money supply. Production must be increased by freeing the economy from the heavy hand of the bureaucrat with his pen-and-pencil armies and permit-licence armouries. The estimate that more acreage of floor-space is brought into use for official paper work than the new acreage brought under cultivation for food, may be rejected as slightly exaggerated.

Our system of licensing for commencement, diversification and expansion of production has put out of commission the two greatest economic power-houses—price and competition. Inefficiency, incompetence and profiteering are provided

sheltered markets. Control is wielded from New Delhi in a country where it takes hours to put through a telephone call over a few hundred miles and days before you can be assured of a seat on a plane. An exhortation to manufacturers and traders to hold the price line is less fruitful than vigorous and realistic steps to increase production: it is easier to increase the national product than to change the national character.

Politically impossible. . . ?

(The Indian Engineering Association, Bombay, March 23, 1972)

W. H. Hutt published last year his book, *Politically Impossible . . . ?* and quoted a leading economist who suggested that the title of the book would embrace "all the reforms which would be really worth undertaking." If wise changes are ruled out by politics, it is a grave indictment of the functioning of the democratic process.

Mr. Michael Lipton and Professor P. T. Bauer have observed that the caste system and the "contemplative, non-experimental" attitude of our people are substantially responsible for our economic backwardness. I would put outmoded ideology as the single most important factor to explain our economic stagnation.

Our present rate of economic growth is so low that we are in the company of Burma, Congo, Haiti, Mali and Somalia. It is true that the government needs resources to generate development, but it is more significantly true that we need development to generate resources. Without development our socialism can only mean distribution of indigence.

Our economic growth is strangulated by a plethora of regulations and by a bureaucracy which has acquired a taste for exercising powers undreamt of twenty years ago. The apocryphal Chinese prayer "to be delivered from flood, fire, famine and governmental officials" would be earnestly echoed by many an Indian heart. It is the seizure of all levers of power by politicians and bureaucrats which is so frustrating to technocrats and professional managers, in the private sector as well as in the public sector.

The tragedy of waste

**(*G. L. Mehta Memorial Lecture,*
Madras, January 4, 1975)**

The word "independence" brings to the surface of the mind nostalgic remembrances of 1947. Memory holds back the door, and we are tempted to re-live the intense hopes and aspirations of the first few years of independence. "Bliss was it in that dawn to be alive, but to be young was very heaven!"

Beyond doubt, there are achievements to our credit. The fact that we still survive as a democracy is no mean achievement, particularly when we realize that the countries which surround us either do not have democracy or have a spurious or adulterated brand of it. We have effected the transition from the bullock cart era to the age of technology and have made impressive progress as a country possessed of industrial expertise and skills. But no thinking man who understands the immeasurable potential of this country can at all feel satisfied with the stage we have reached in the economic, social or constitutional sphere.

The tragedy of India today is the tragedy of waste—waste of manpower, waste of industrial capacity, waste of talent and experience which can be harnessed to great national purposes. More than half of our laws and national policies seem to be well calculated to ensure the perpetuation of such waste.

Inter-State disputes regarding river waters are mainly responsible for the starvation and malnutrition of millions of our citizens. Rivers should be dealt with as national assets, put beyond the reach of politicians and should be utilized for the national good under the direct control of technocrats.

Undoubtedly, it is our culture and past civilization which alone can give the entire nation a sense of identity. Perhaps never in history has there been another nation which had so great a heritage as ours and which was so tragically unaware of the inestimable value of that heritage. India of the future will find her identity only by going back to India of the past.

The economic mandate of the Constitution

(Presidential Address, The Bombay Chamber of Commerce & Industry, April 3, 1973)

There is a yawning communication gap between government and business. When that gap is closed, eradication of poverty will appear as easy as it appears difficult today.

I cannot help giving expression to my strong belief that States like Maharashtra would have made greater progress if the original plan of the Constitution had been respected in the field of economics.

It is imperative that the States should regain their legitimate powers over industries and commerce. It is a measure of the prescience of the late Professor D. R. Gadgil that nearly twelve years ago he pleaded for "the State's insisting on obtaining for itself greater measure of freedom and latitude of planning". He added, "Present rigidities in this regard and the stranglehold, over all activity, of the Centre and its agencies and officials, make impossible any real progress."

We must pause and identify the reasons why this country with 5,000 years of civilization, with abundant natural resources and fantastic human skills, is floundering in the morass of poverty while countries less richly endowed are able to forge ahead.

The best cure for our economic ills is to go back to our Constitution and fulfil the Directive Principles of State Policy set out in Part IV. It is a fact not generally known that nationalization is not one of the Directive Principles of State Policy. On the contrary, art. 39(b) of the Constitution provides that the State shall direct its policy towards securing "that the ownership and control of the material resources of the community are so distributed as best to subserve the common good." Distribution of the ownership and control of material resources is the exact opposite of nationalization which involves centralization of the ownership and control in the hands of the State. These words of art. 39(b) of our Constitution are taken

from the Constitution of the Irish Free State which is a Catholic country. The Roman Catholic Church does not countenance nationalization but it directs the State to have reasonable distribution of ownership and control of the material resources and the means of production.

It is one of the incredible ironies of history that various nationalization laws of the Central Government purport to have been passed in pursuance of the Directive Principle in art. 39(b) which, as I have already indicated, provides for the very antithesis of nationalization.

Further, art. 19(1)(g) of the Constitution expressly confers upon all citizens the fundamental right to practise any profession, or to carry on any occupation, trade or business; because the conviction underlying our Constitution is that collective progress is the result of individual effort and that the way to enrich the country is to give freedom of enterprise to citizens, subject to reasonable restrictions in the public interest. The continuation of poverty and economic stagnation is due to the fact that we have deviated vastly from the constitutional mandate. The doctrinaire approach which regards free enterprise as entitled to exist only on the sufferance of the State is the very converse of the scheme of our Constitution.

I would like to touch upon one other problem which is of all-India importance and is of special importance to Maharashtra—the problem of balanced regional development.

A backward region, by definition, is one where economic infrastructure is non-existent or woefully inadequate. The proposal to exempt 20 per cent of the profits for industries started in backward areas is hardly an incentive, since the additional costs, both on capital and revenue account, of running an undertaking in a backward region would far exceed the saving in income-tax proposed. Further, experience shows that on an average, undertakings in backward areas seldom make any taxable profits for the first five or six years. Thus the 20 per cent exemption of taxable profits would operate for half or less than half of the ten years. The proposal to increase the subsidy from 10 to 15 per cent of the capital investment required in backward areas, subject to the investment ceiling of Rs. 1 crore as against the present ceiling of Rs. 50 lakhs is, again,

wholly inadequate for rapid transformation of the neglected regions. One has only to compare the tax benefits and cash subsidies offered in other countries like Argentina, Brazil, Canada, Greece, Italy, France, Belgium, the Netherlands, Norway, U.K., Iran and New Zealand, for the development of their neglected areas, to see how meagre our government's proposals are. In other countries, the profits of undertakings in backward areas are wholly exempt from income-tax for 10 to 15 years, and the government subsidy is as high as 30 to 45 per cent of the capital cost.

The limits of a country's economic growth are seldom set by its physical resources, but usually by the capability of its leaders. India will go as far as, and no farther than, the vision of its leaders can take it.

The humanistic face of capitalism

**(The Indian Merchants Chamber,
Bombay, February 26, 1974)**

I feel deeply honoured by your invitation to be the Chief Guest at your annual general meeting. Since I am conscious of the almost unbroken tradition of business chambers to choose their chief guest from a particular walk of life, your invitation has had a very unhappy effect on me. I woke up this morning in a cold sweat, dreaming that I was a minister!

Over the whole world there seems to have descended the old Chinese curse—"May you live in interesting times."

I am a champion of private enterprise, but I do believe at the same time that private enterprise is justified only to the extent to which it displays private initiative. By "private initiative", I mean that initiative which enables a businessman to act on his own in the cause of promoting public good.

We must evolve new standards of measurement for determining the ranking of business. The new standards would have to be qualitative, and not quantitative in terms of mere output and profits. It is true that a business must do well before it can do good; but, at the same time, it is not enough that a business does well only for its owners. Dr. Alexis Carrell observed that it is not so important to add years to your life as it is to add life to your years. That sentence expresses beautifully the new standard of measurement I have in mind. Our financial papers give the figures of capital block, turnover and profits of different companies from time to time. But more important are the figures of the fund of skills, disciplines and productive human resources generated by the enterprise. These are the most valuable assets of the company, though they never appear in the accounts.

What is needed is a commitment of time and energy to public causes which transcends the materialistic objectives of business. The businessman must give not only money but of himself to the human values which are so essential to the

quality of democratic life. He must get personally involved, and not merely be content to place his resources at the disposal of others for public causes. It is personal involvement which makes all the difference. The main reason why so little good is done by the public sector and by governmental agencies is the lack of personal involvement.

Gone are the days when the best that was expected of business was that it should provide jobs, give fair wages, make contributions to the public exchequer and place quality goods at reasonable prices on the market. Capitalism has now a different face—it is humanistic capitalism.

The best way in which business can assist the masses is not so much by providing money as by providing expertise, managerial and professional skills, for the advancement of causes which would make life more bearable for the masses.

Businessmen would have to adopt the type of outlook indicated above, if they want to survive in the changing world. They would have to adapt themselves to the new environment in which emphasis is rightly put on social and economic justice. One of the basic laws of nature is that adaptability is the price of survival. In the prehistoric ages, the dinosaur and the mastodon—two of the strongest and largest animals that ever lived—perished, while the insignificant cockroach survived. The reason was that those mighty animals could not adapt themselves to the changes brought about by the passage of hundreds of centuries, while the cockroach could. Incidentally, the cockroach has inhabited this planet far longer than man.

There is one more thought I would like to leave with you this evening. I think the time has come when workmen should have a share in the capital of the company they serve. By some reasonable mechanism we should ensure that workmen, either individually or collectively, get a stake in the capital of the company so that they may have a sense of identification with the enterprise they serve and a sense of involvement as owners in its growth and development.

India in the eighties

(*G. D. Somani Memorial Lecture,*
Bombay, January 8, 1981)

India has a strong claim to be regarded as the world's greatest expert in the art of perpetuating poverty. It takes a lot of doing to keep a singularly gifted and enterprising nation like India in the ranks of the poorest on earth.

While we are beyond doubt among the 15 most intelligent and skilled nations in the world, we are among the 15 poorest. The frightening fact is that during the entire period of the last 31 years that we have been a republic the per capita income of our people has risen by only 55 per cent in real terms, since the average annual growth rate of our economy has been no more than 3.5 per cent and family planning has progressed so little beyond the planning stage.

Economic growth without social justice is inhuman, but social justice without economic growth is impossible. And economic growth is equally impossible unless we combine the humanism of true socialism with the dynamism of private initiative which is loosely called "capitalism".

The Indian economy is a giant held in chains. What India has achieved so far in economic development is only a small fraction of its true potential. We have the ability to become a major economic power at the end of the decade, if only we shed the shackles of ideology and pursue pragmatic economic policies.

In the old established industries many other countries are ahead of India. But there are industries which have just emerged on the world horizon—for instance, bio-technology including bio-gas and bio-mass, and electronics. India should take in a big way to these green fields and pastures new, where no country can have a head start over us.

One of the industries in which India has a tremendous potential for growth is the computer industry. The Indian

mind is extremely well-suited to the computer age. But for strangulating restrictions, India would be earning enormous sums of foreign exchange by doing "software" and other work for developed countries which like to turn to India because the pay scales are substantially lower here for comparable skills.

Controls must claim the primary responsibility for the chronic scarcity of essential goods and for the ever expanding black market. But our unhealthy addiction to controls is assured of continuance because they satisfy four basic hungers—the hunger of professional politicians for the substandard class of socialism, political parties' hunger for an unending supply of funds, the bureaucrat's hunger for larger and larger powers, and the unprincipled businessman's hunger for untaxed income.

Countless regulations and restrictions of arbitrary origin and pernicious effect continue to ensure unemployment and grinding poverty—controls whose mind has decayed completely but whose teeth and claws are sharper and stronger than ever before. Controls came to India as a national blessing in the early stage of our republic but have grown to become a national curse. We are the only country in the world where a manufacturer is prohibited by law from increasing his production beyond the permitted capacity even though he may seek to achieve the growth merely by improved techniques or more efficient management and without employing additional capital or installing new plant and machinery.

To tackle the problem of unemployment, ninety million new jobs would have to be created during the next ten years, *i.e.* an average of nine million new jobs a year. In actual fact only four million new jobs were created in all the five years of the Fifth Plan, *i.e.* less than one million new jobs a year. There was a fall of 2.2 per cent in our per capita gross national product in 1980-81 as compared to 1978-79.

We have to transform our apathetic and lethargic democracy into an anticipatory and participatory one. An anticipatory democracy foresees the problems ahead and equips itself well to meet them; and a participatory democracy

is one in which the people are not content merely to vote at the time of elections but participate in the continuous process which goes to the making of decisions and the formulation of policies.

I would like to appeal to business to spend five per cent of its profits in discharge of its social responsibilities — four per cent on human investment in the area adjoining the factory or business premises, and one per cent in educating our law-makers (M.P.s and M.L.A.s). The government should allow this expenditure as deductible for income-tax purposes.

In order to develop economically, a nation needs mental resources, material resources, and the will to progress. India has the first two but not the third. We have the wish to progress; we have yet to develop the will to progress.

Thoughts on an Indian renewal

(*The Illustrated Weekly of India*, **September 6, 1981**)

Our democratic structure is now showing dangerous signs of stress and . rain. It may go on like this for years; but it is equally possible that the structure may collapse sooner than we think.

An Indian renewal would involve transformation of a type of which Sweden is an excellent example.

Only a century ago Sweden was plagued by poverty and illiteracy and was one of the most backward countries of Europe. Today it is one of the richest in the world with a gross national product of $95 billion, as against India's gross national product of $130 billion—although India's population is about 80 times larger than Sweden's population of 8.3 million. The reason why Sweden's annual per capita income is as high as $11,600 (as against India's $190) is that Sweden allows its scientists and engineers and other technocrats full freedom to develop the country in the private sector. The Socialist Party had ruled Sweden for decades, and yet when its 44-year uninterrupted regime ended four years ago, 95 per cent of industry was still left in the private sector. By contrast, our self-defeating socialism is mainly responsible for our pitiable economic condition. Seventy-five per cent of our industrial assets are in the public sector but they give only 33 per cent of the total industrial output.

While I think of the future of India with a great deal of concern, the concern is not tinged with despair. I like to act on the principle—pessimism of the intelligence, optimism of the will! India has the gift of producing great souls in the darkest hour. I have a deep-seated faith that when the hour strikes, the man will be found.

5

LETHAL CONTROLS ON CEMENT

(Chairman's Statements at the Annual General Meetings of the Shareholders of The Associated Cement Companies Limited)

The Dark Age of the grey product

(January 29, 1969)

"Experience", said Sainte-Beuve, "is like a pole-star; it only guides a man in the evening, and rises when he is going to rest". Apparently, for some people this star never rises,—early or late. New Delhi has learnt little from the experience of the earlier Plans.

(January 23, 1970)

History is replete with ironies. But it may be doubted whether the story of man affords a more tragic irony than the happenings in the Mahatma's motherland in the centenary year of his birth,—the total disregard for his creed in economics and politics and the great schism within the Indian National Congress. Other countries have rejected their Prophets; but only the daedal Indian mind can revere the Mahatma and reject his teachings.

(January 21, 1971)

Inflation has reached the point where "to speculate is safe but to save is to gamble".

The bogey of concentration of economic power is the current fable in the realm of economic mythology. Ancient Indians held the Evil Spirit responsible for smallpox, and modern Indians are asked to hold concentration of economic power responsible for the ill-health of our economy.

For a people whose national motto is "Truth shall prevail", we do remarkably well in the way of propagating and swallowing falsehoods. Consider the oft-repeated allegation that capital is on strike and large business houses are not willing to co-operate with the government in developing the national economy. The figures as disclosed by the Ministry for Industrial Development tell exactly the opposite story. So far from capital being on strike, it has been struck,—struck repeated and swingeing blows in the name of outdated ideologies which have not the remotest relevance to the economic realities of the day. Between our licensing regulations and the provisions of the Monopolies Act, the inbuilt delays make eternity intelligible.

In point of economic wisdom and co-operation between the government and the business community, India is the antipodes of Japan. The Indian Government believes that business, by definition, is socially irresponsible and can only be tolerated as a necessary evil; whereas in Japan there is intimate teamwork between business executives and government officials at every level, and bureaucrats and businessmen work together in total harmony like a tight-knit family. While the Indian Government has an incurable obsession about big business, the Japanese Government insists on minimum sizes for industrial plants where it feels that optimum output is vital. While the Indian Government jibs at making funds available to large enterprises, the Japanese Government deliberately funnels funds to areas with the highest growth potential. Whereas we pillory our big industrial houses and put them in the list of Twenty Criminals, the Japanese Government issues handsome Certificates of Merit to big corporations which grow and expand continuously. Japan's gross national product increases by an average of more than 16 per cent annually; whereas our high-blown talk about economic development remains high-blown talk.

The techniques of creating the wealth of nations have advanced a great deal during the last hundred years; but we still cling nostalgically to the ideology thought up by the expatriate German Jew in the gloom of the British Museum Library. "Distributive justice" can never get off to a start when there is nothing to distribute.

(January 6, 1972)

"All isms are lethal", said Jung. Our obsession with big business and concentration of economic power and our penchant in favour of micro-mini enterprises take little account of the fact that the whole concept of creation of national wealth has been revolutionized in modern times by economies of scale and fantastic technological advances. Man will sooner discover a cure for cancer than for macrophobia and microphilia. We have yet to learn that national prosperity is indivisible and that in a well conceived economy a big enterprise will give crores of rupees to the national exchequer, millions in profits to ancillary small-scale industries and employment to thousands.

"All happy families resemble one another, but each unhappy family is unhappy in its own special way." Tolstoy's famous words at the beginning of *Anna Karenina* apply just as well to relations between the government and the governed. When the government and business are at odds, politicians and financial papers need daily columns to explain just how wide and unavoidable their differences are; when the two come together and work in harmony, there is very much less to say.

(January 5, 1973)

While the country is in the grip of a grave crisis, it would be the height of folly to let our reaction to the crisis be

determined by facile assumptions and wishful thinking. We should isolate and excise the malevolent cells in our planning and policies, which are responsible for our economic ill-health. Unfortunately, only the finest of statesmen have the courage and perspicacity to do such an exercise. "You need dynamite to dislodge an idea that has got itself firmly rooted in the public mind", said P. G. Wodehouse. An appeal to rationality and wisdom is so different from dynamite!

(December 27, 1973)

The Middle East crisis has falsified all calculations. You can pour oil on troubled waters; but what can you possibly pour on troubled oil?

The Indian situation may be summed up in the staccato style of Micawber. Votes doubled; expectations multiplied; income stationary; result misery.

"The requirements for economic growth," says Sir Arthur Lewis, "do not conflict with the objectives of democratic socialism, but they undoubtedly conflict with many cherished socialist blue-prints, dogma and slogans. Hence the last fifty years have seen much discarding of ways of thought which are not compatible with the new objective of economic growth." The discarding process has hardly begun in India: our official thinking is smugly content to be fifty years out of date.

We could have achieved economic growth with social justice—a consummation devoutly to be wished. We could have achieved economic growth without social justice—an evil to be eschewed but capable of subsequent rectification. In reality we have achieved neither economic growth nor social justice—the worst of all possible alternatives.

Delhi's delays have passed into a byword. Unaffected by national imperatives and unmoved by economic urgencies, it is, in the words of Malcolm Muggeridge, "government pure and undefiled; endlessly minuting and circulating files, which, like time itself, had neither beginning nor end, but just were".

Time is running out. It is still not too late to reconstruct our battered economy by building on the only rational premises, *viz.* that pragmatism is not a vain word; private enterprise is not an obscene joke; sound economics is not political folly. On these premises alone can we renew the economic youth of the State.

(December 23, 1974)

Price control is the most dangerous drug in the economic pharmacopoeia. In administering it we must heed the advice of Hippocrates who, in the early stages of medicine, said, "Above all things, do not do harm". Price control can have very adverse side-effects unless it is administered with wisdom and constant vigil.

(December 19, 1975)

Economists—the tribe which knows more about the past than the future—tell us that the third quarter of the twentieth century has been by far the most successful in history. During the last 25 years the real gross world product has more than trebled, *i.e.,* man has increased his annual productive power by more than 200 per cent. The two main causes of this incredible achievement have been the fantastic advances in technology and the frightening increases in population. The two main consequences have been violent distortions in currencies and a wholly new strain of intractable economic problems with political repercussions in tow.

India has had its fair share of the global maladies. We have conquered one of them with resounding success. Our finest feat during the current year has been the containment of inflation—the Genghis Khan of the Seventies. But now we have the other problem of recession-cum-unemployment. It is difficult to

choose between the evil we have vanquished and the evil now at the door. When asked to pronounce a preference between two bad poets, Dr. Johnson pointed out the difficulty of establishing a point of precedency between a louse and a flea.

(December 18, 1979)

We are living in days of universal economic hypochondria. If one is asked to answer in a single word the question as to which is the most intractable economic problem facing the country today, the answer would probably be "energy". If a two-word answer were permitted, it would certainly be "energy and inflation".

It is expected that in the current year India will suffer an unprecedented shortage of cement of the order of six to seven million tonnes. We are now paying dearly for "the years of the locusts", the wasted years between 1969 and 1977 when strangulating controls and lethal price fixation made any expansion impossible.

(December 18, 1980)

Cement has been one of the creaking joints of India's arthritic economy. The steel plants did not have power; the power plants did not have coal; the coal mines did not have wagons; and the cement plants had neither power nor coal nor wagons.

Power failures are widespread and prolonged. While they serve to remind us that dining by candlelight is romantic only when there is a choice, for the cement industry they have been positively ruinous.

Reassuring statements emanate from New Delhi from time to time, but they remain in the realm of words. Ministerial pronouncements are like a rain dance during a drought:

they do not change the weather, but they are calculated to give the impression that the chief is doing something about the scourge.

We must refresh our jaded minds. Enterprise, not control, makes production. Production, not legislation, makes prosperity.

(December 17, 1981)

The cement industry is plagued by the twice-told theme—the controls which have fixed prices and destroyed values. Continuation of these controls merely demonstrates that while wisdom has its limitations, folly suffers from no such handicap.

Price control is a juggernaut that goes on regardless. It takes no account of the market forces and the divergent problems faced by the widely scattered plants some of which are hoary with age. The industry found that economy, managerial efficiency and technological improvements—all were in vain. They were sadly nullified by the irrational level of price control. For the first half of the year we lived on hope rather than expectation, and for the second half on nerve rather than hope.

The damage done by the controls on the price and distribution of cement is, truly, "past all count or care". These controls represent an outdated policy contained in a time capsule which thinking governments had buried a generation ago. Of all commodities, cement has become the most prolific begetter of black money and public corruption. The widely accepted slogan is—No housing without black payment.

It is time we asked the crucial question—for whose benefit are the controls maintained? Surely not for the benefit of the poor consumer who finds it harder to get cement than ever before and who is compelled to pay a black market premium on every bag of cement, soaring up to and even beyond 200 per cent of the controlled price in Bombay and in some other places. Surely not for the benefit of the cement industry which is awash in red ink and has begun to sink deeper into the mire. Surely not for the benefit of the nation which suffers the rapid decay of the plants that are national assets.

The advantages of decontrol would be certain and enormous. The consumer will get his cement at a price far below the prevailing black market price, and he will get it without having to corrupt any minister, mandarin or member of the legislature; while competition in a free market will assure him of a better quality product.

Building a new India

(December 17, 1982)

A recession by any other name would smell as malodorous: the officials call it "a fall in demand". However, at this time of general economic malaise, the cement industry has joyously come out of the intensive care unit.

The only cause of the sea change in the industry's health is the partial decontrol of cement.

The Dark Age of the grey product ended on February 28, 1982. That date represents a milestone in the history of cement. The industry had writhed for four decades under the crushing burden of wholly irrational price control. Politicians and bureaucrats in public administration, and racketeers and buccaneers in private deals, made fortunes at the expense of the common man and the exchequer, while the honest manufacturer was left with no resources even to maintain his plant. Cement control had to result in one Chief Minister being summarily deposed and two others being severely discomfited, and the generation of black income from cement had to reach the level of Rs. 700 crores per annum, before the king-size folly of controls dawned upon us.

The partial lifting of control brought a radical transformation overnight. The New Deal for the cement industry, for which the government deserves our grateful thanks, has welcome features,—the industry is now permitted to sell in the open market after meeting its levy obligation; the retention price of the levy portion has been revised upwards to a realistic level;

and a single retention price has been fixed for all cement units, thereby facilitating the modernization of the old plants.

Three conditions are necessary for the New Deal to produce results. Power and other infrastructural bottlenecks must be promptly removed; every six months the price for levy cement must be punctually revised; and the surplus funds of the producers must be prudently ploughed back.

G. K. Chesterton observed, "The golden age only comes to men when they have, if only for a moment, forgotten gold." The current price of gold, and the occasional high price of free market cement, indicate that there is no imminent possibility of the golden age descending upon the earth. A long regime of legal regimentation has deadened the conscience of a section of the business community and has led them to believe that whatever is not legally prohibited is right.

However, the heartening sign is that the majority of cement manufacturers do understand the sovereign virtue of self-regulation and the profound need for obedience to the unenforceable. It would be wrong to put the entire industry in the dock for the irresponsible behaviour of a few. The free market can be a short-term pain but it is bound to prove a long-term gain.

Since the efficacy of controls has been finally consigned to the limbo of exploded fallacies, we are left with only two ways of eliminating free market exploitation. The first is to optimize production so as to match the demand, and the second is to elevate human consciousness. It would be easier to achieve the first solution than the second.

In deciding upon prices, one must never lose sight of the distinction between free enterprise and free-booting,— leadership in industry has more to it than mere volume of production.

In the next four to five years, the cement industry is likely to need an investment of around Rs. 1,000 crores for rehabilitation and modernization. There can be no doubt that if the remaining controls are lifted, the industry would have a great potential for generating tax revenues, saving the foreign exchange on import of two million tonnes of cement a year,— and building, in more senses than one, a new India.

(December 16, 1983)

During the 40 years of control on price and distribution, the cement industry was a stretcher case and remained in a comatose condition despite a series of jabs and potions and poultices administered on weird diagnoses from time to time.

In March 1982 came partial decontrol. The spectacular performance of the cement industry during 1982-83 bears eloquent testimony to the truism that government policies can make or unmake an industry. The cement industry has left behind the decades when it was festooned with red tape and flushed with black money. It has started its arduous march on the road to growth.

If even partial decontrol can animate the industry as if by a massive transfusion of vitality and raise it from footnote to first paragraph status in the story of the national economy, what would a total abolition of controls not do by way of transforming the industry?

Keynes in his toast to the Royal Economic Society in 1945 said: "To economics and economists who are the trustees, not of civilization, but of the possibility of civilization". The chances of translating the possibility of civilization into reality are directly proportional to our willingness to adhere to a policy which is dedicated to purpose and pragmatism rather than ideology and illusion.

PART II

Taxation

6

THE IDEOLOGY OF TAXATION

The fiscal stimulus

(*M. Ct. M. Chidambaram Chettyar Memorial Lectures,* **Madras, August 13 and 14, 1965**)

It is a truism, and like most truisms often forgotten, that taxes, like water, have a tendency to find the lowest level. In the last analysis, almost all taxes ultimately hit the common man.

The ideology of direct taxation has changed with the times. Fashions in this area come and go, like fashions in dress. What was regarded as good fiscal wisdom a hundred years ago is now discarded as unsupportable. In an article on income-tax published in the *Encyclopaedia Britannica* around 1846, the learned author said that income-tax was an unpractical levy and could not be imposed successfully. But we have now come to live with income-tax as one of the inescapable hard realities of life.

The ideology of taxation is broadly based on three basic considerations—to raise revenue, to bring about certain economic and social results and to discourage the consumption and use of articles which the State regards as obnoxious. Most taxes fulfil the first consideration. The second objective is achieved by taxes like income-tax, wealth-tax and estate duty, which try to reduce disparity between wealth and poverty. The third viewpoint is served by taxes like those on liquor, tobacco and gambling. You will recall the famous dictum of Napoleon that he regarded vices as very good patriots; the love of brandy brought him five million francs every year, and he wanted to know which virtue contributed so generously to the public exchequer. Emerson endorsed this view and added that vices have broad backs and tobacco can cheerfully carry the load of armies.

Adam Smith, in the 18th century, in his classic, *The Wealth of Nations,* pointed out that four main objectives should be borne in mind by the State in levying taxes. *First*, equity.

The taxes must be equitable and fair as between different classes of society. *Secondly*, the convenience of the taxpayer. Taxes must not be so complicated and so cumbersome in their operation as to cause needless inconvenience and hardship to the people. In India, this objective has been wholly overlooked by the Union and by the States. *Thirdly*, economy. The government must economize and levy only the minimum tax which is necessary for the national good. Lord Macaulay, in the famous Minute which he wrote in India when he was here between 1834 and 1838, expressed the same thought when he said that all taxes are evil and the burden is on the government to prove that a particular levy is justified. *Fourthly*, certainty and clarity. The laws imposing taxes must be so precisely and clearly worded as to make the taxpayer understand what exactly is the burden he is called upon to bear.

The canons of taxation in modern times have been stated to be—social justice, consistency with economic goals, ease of administration and compliance, and revenue adequacy.

Social justice is beyond doubt the most important goal of taxation, particularly in under-developed countries. Today there are in the world 100-odd under-developed countries, and India is one of them. Two-thirds of the world's population is to be found in these countries. The main problem facing these under-developed countries is to reconcile the objective of social justice with the need of providing the fiscal stimulus to promote economic goals.

Income-tax is of three types—(*i*) progressive tax, where the rate increases with the higher slabs of income, (*ii*) proportional, where the rate remains constant at all levels of income, and (*iii*) regressive, *i.e.* the rate comes down as you approach higher slabs of income. Progressive taxation is a fact; proportional taxation is a theory; regressive taxation is only a dream. Great modern thinkers on economics, like F. W. Taussig and E. R. A. Seligman, have supported progressive taxation as the only mode of achieving the democratic ideal of social justice. Although progressive taxation seems to be mainly a 20th century idea and ideal, the great Indian philosopher and jurist, Manu, recognized the principle more than 3,000 years ago. He said: "To make the burden of taxes equal....

is not effected by a mere numerical proportion. The man who is taxed to the amount of one-tenth.... of an income of 100 rupees per annum, is taxed far more severely than the man who is taxed an equal proportion of an income of 1,000 rupees, and to a prodigious bigness more severely than the man who is taxed an equal proportion of 10,000 rupees per annum."

Parkinson, in *The Law and the Profits,* says that taxes are of two types—the tax we impose on ourselves and the tax we impose on others. The taxes which we impose on ourselves are usually within the bounds of reason and good sense, whereas no such limits are known to the taxes which the law-makers merrily impose on others. This is the weakness of human beings who are never able to appreciate the hardships of others exactly in the same light in which they would appreciate their own personal hardships. As the wits say, human nature is human nature, and human nature will continue to be human nature so long as human nature remains human nature.

It was one of history's major ironies when Khrushchev at his meeting with President Eisenhower at Camp David in 1958 remarked that the Soviets "are using the incentive system to increase production far more than the U.S." and that the American tax system "stifles increased productivity". At that time the personal income-tax rates in the U.S.A. ranged from 20 per cent at the lowest taxable income bracket to 91 per cent on $400,000 and over, and the rate of tax on companies was 52 per cent. On the other hand, Soviet Russia had a top income-tax rate of only 13 per cent (the rate is even lower now) and has had no inheritance taxes since 1942.

In January 1963, Kennedy, realizing the self-defeating consequences of excessive taxation, proposed a bold measure of tax reform and the Bill was passed by the Congress after his death. The maximum marginal rate of income-tax was scaled down from 91 per cent to 77 per cent in 1964 and was further reduced to 70 per cent in 1965. Similarly, the minimum rate of 20 per cent was brought down to 17 per cent in 1964 and was reduced to 16 per cent in 1965; the tax on corporations from 52 to 50 per cent in 1964 and to 48 per cent in 1965.

As expected, the tax cuts had a galvanizing effect on the national economy and actually increased the revenues of the U.S.A. enormously. In 1960 and 1961, the gross national product at 1954 prices had increased over the previous years by only 2.7 per cent and 1.7 per cent respectively. The rate of unemployment was 6 per cent. After the tax cuts the lethargic economy started on its grand march. The tax cut is estimated to have increased individual and corporate incomes in the U.S.A. by $14,000 million a year. The enormous upsurge in government revenues as a result of the tax cuts gave point to the joke current in Washington about a pre-Keynesian asking his up-to-date companion how the President is to pay for all his new social programmes. The answer comes back: "How old-fashioned! Out of tax cuts, of course!"

The old-fashioned fiscal theory that income-tax rates must be increased to provide larger revenues for the State has long ago been exploded. India pathetically clings to it despite inevitable disillusionment year after year. The modern fiscal policy pursued by the most progressive countries is to make revenues grow, not by increasing income-tax rates but by making incomes grow and by enlarging the tax base. In other words, tax revenues must be made self-generating. Nations standing under the shadow of defeat and disaster, with their economy in ruins around them, have awakened to the possibilities of the modern fiscal policy and have enjoyed its fruits already.

The old truth, buried for years under the tax-piling formerly resorted to by countries like the U.K. and the U.S.A., has now been exhumed and found to be a pearl of great price. The truth, in the words of Meckling and Alchian, is that "Incentives are the prizes in the game of life—the goals individuals seek—the carrots. Through the ages of Tutankhamen, Alexander, Caesar, Louis XIV and the Atom, they have remained the same."

The method of eradicating economic inequalities by giddy levels of taxation involves levelling down. The modern fiscal method aims at levelling up and uses rapid economic growth as the one unfailing instrument for reduction of economic inequalities.

After the last World War, the Allies Occupation authorities imposed a steeply progressive corporate and personal income-tax system on Germany. The result was large-scale evasion and economic stagnation. In the opinion of the German authorities—

> "A continuation of the earlier fiscal policy based on Allied legislation would have led to disaster in spite of the Marshall Plan and the currency reform. Because of the existing shortage of capital, a continuation of such excessive taxation would have initiated a process of economic contraction, resulting in growing social burdens in face of shrinking tax revenue and a declining national product."

The German Government, in spite of the mounting public expenditure, "took the only possible way out of the situation into which it had been forced, by making tax reductions the first step in its fiscal policy". The lowering of the tax rates benefited the small taxpayer as well as large enterprises. Generous, if not complete, tax exemptions were given to individuals and firms who saved and invested funds in "acceptable" ways such as in capital goods and housing. The taxation measures of 1953 and 1955 together represented an average reduction of 30 per cent in both the personal and corporate rates of taxation. By quick successive stages, the maximum rate of personal tax which was originally at the U.K. level, was reduced to a little more than 50 per cent.

The then Vice-Chancellor of the German Federal Republic, Prof. Ludwig Erhard, in *Prosperity Through Competition,* has expressed his unshakable conviction that the record increase in the real net income of Germany in the last decade,—an annual rate of growth of 7.5 per cent exceeded only by that of Japan of 8.8 per cent—would have been impossible but for the "incentive taxation" policy pursued by him.

Japan serves as a great object lesson. It applied the fiscal stimulus and romped its way to a rate of economic growth unparalleled in modern history. The rate of tax on companies, which was 42 per cent in 1951, has been brought down to 38 per cent on undistributed income, while on the company's

income distributed by way of dividends, it is as low as 26 per cent. In 1957, the rate of income-tax levied on the average lower middle class and the upper working class was literally cut in half. The highest marginal rate of tax on individuals in Japan is just over 60 per cent. Japan found that with every tax cut, the economy boomed and the exchequer garnered golden grain.

Apart from reducing the rate of tax, Japan has granted very liberal exemptions in respect of perquisites enjoyed by employees. It gives generous tax relief for every dependant. As a citizen advances in years, he is given a progressively higher exemption from tax since age must inevitably take its toll of the human body.

In the U.K., both the originator and the long-suffering victim of excessive rates of income-tax, the view that the tax rates need to be slashed is gaining ground. At least this is the view of sound thinkers and far-sighted economists, if not of self-seeking politicians. Professor Kaldor recommended the lowering of the maximum marginal rate of taxation on personal income to 45 per cent. To use his own words:

> "From the point of view of the economic effects of taxation the major consideration is to prevent the tax system from becoming too much of a disincentive on effort, initiative or enterprise. Taxes on income make it less attractive to undertake work or to risk capital in productive enterprise; and, through the factor of 'double taxation' of savings, penalize savings and put a premium on spending. The importance of all these effects depends on the marginal rates of taxation. I am strongly of the view that the development of the last 15-20 years which imposed (nominally) fantastically high marginal rates of tax, while permitting the continuance of wide loop-holes for tax avoidance, is highly pernicious in character.
>
> "These high marginal rates, amounting to 80 to 90 per cent (in the U.K. at one stage they amounted to 97.5 per cent) could never have been imposed had they really been what they pretended to be, a tax on the genuine accrual of wealth. As it is, these confiscatory tax rates truly apply only to a

small minority of people who cannot avoid their incidence, and their long-run effect is bound to be wholly pernicious, both in penalizing the prospects of certain careers which are vital from the national point of view, and in undermining public morality."

Colin Clark in his *Taxmanship,* published by the Institute of Economic Affairs in 1964, strongly advocates that the tax rates must be drastically reduced. At certain slabs of income where the present rates are 6 per cent at the low level and 77 per cent in the high income bracket, Colin Clark advocates 2.4 per cent and 48.5 per cent respectively, and he champions scaling down of the tax rates all along the line.

It is not as if unbiased economic thinking in this country has been unmindful of the disastrous consequences of the excessive tax rates. Such an impartial body as the National Council of Applied Economic Research arrived at the following conclusions:

"As regards personal taxation, the cumulative impact of income and wealth taxes on entrepreneurs in the higher income groups, who play a crucial and dynamic role in creating new enterprises and pioneering new industries, seriously curtails their capacity to save..... After a point the disposable income of an individual declines with every addition to his wealth through savings. At such a level of income, the tax liability is generally met at the expense of savings which in the case of most businessmen are likely to be invested. Since the incentive to save is virtually eliminated at this level, there is a sound economic justification for slowing down the pace of progression of taxes at very high income levels."

The importance of fostering enterprise and promoting savings and investment was emphasized by Dr. Lokanathan in his *Taxation and Private Investment*:

"Thus the implementation of the nation's basic economic policy requires not the suppression of private enterprise as some seem to imagine, but the fostering of its continued growth in desired directions. In this context private invest-

ment assumes a crucial role. And private saving has an even greater role to play since a considerable part of public investment itself is financed through a draft on private savings. It may, therefore, be said that a central objective of tax policy in India must be to promote the highest possible rate of private saving in the country."

The *sine qua non* of an economy which fosters enterprise and promotes savings and investment, is a reasonably low tax structure.

Other under-developed countries like Ireland and Nigeria have already hitched their fiscal wagon to the star of incentive and experienced a rate of economic growth higher than that of India. Apart from the U.S.A., Germany and Japan, other developed countries like Belgium and Holland (1964 witnessed the largest income-tax reduction in Holland's history) have employed the fiscal stimulus and with lower tax rates reaped ever richer harvests.

The remark that tax rates in India cannot be reduced because of widespread evasion, is on a par with the observation that you should not go into water till you have learnt to swim.

It is well recognized that a high level of taxation is not disinflationary but positively inflationary, because if the solution to the problem of inflation is more production, then a very high level of taxation which reduces the margin of saving and the amount available for investment is a potential inflationary force. Further, it destroys all cost consciousness as it destroys all ethics consciousness: a company has as little incentive to economize when 70 per cent of its expenses are met by the government, as a citizen has to work when it is more profitable to evade tax on Rs. 20 than to earn Rs. 100.

Post-war history shows in luminous contrast the two types of tax policies pursued by different democracies — the nutritive budget which breeds lilacs out of the dead land and stirs dull roots with spring rain, and the bleak budget which saps the nation's strength, blights confidence and stifles enterprise.

In economics there are no miracles, there are only consequences. The economic "miracle" of Germany and of Japan

is nothing but the predictable result of the vision of their government and the discipline of their people.

No doubt, rewards must be shared, but first they have to be earned; wealth must be distributed, but first it has to be created. Only good management and hard work, faith and initiative, on the part of the people can accomplish the end. However, the government's function is to offer incentives and create the climate in which these qualities can germinate and be brought to mellow fruitfulness. No dispassionate and perceptive observer can pretend that the Government of India has performed this function.

Our direct tax policies suffer from five patent defects which can be easily remedied but which the government has so far resolutely refused to tackle:

(*i*) Absolute uncertainty; changes in laws and rates of tax, which are as unpredictable as they are frequent.
(*ii*) Complexity which verges upon incomprehensibility.
(*iii*) Excessive and cumulative burdens which make dishonesty immeasurably more rewarding than integrity and hard work, and make India the highest taxed nation.
(*iv*) Injustices inherent in fatuous laws; and arbitrary provisions which stem from individual whims and are not based on any discernible principle of legislation or taxation.
(*v*) An administration marked by petrification of discretion and paralysis of the will to do justice.

With the growing population, the rising prices and the mounting number of the unemployed millions, the real answer can only be greater production and a wider industrial base. It would hardly be an exaggeration to say that the future of India, and in any event the future of democracy in India, depends upon higher production, both in the fields and in the factories. The requisite increase in the gross national product is almost unthinkable under the present devastating burden of taxation.

The rates of direct taxes which were steep enough in 1957 have been further raised to blighting heights. Progressive

taxation, *i.e.,* taxation at rates which rise with income, is a sound principle of taxation so far as it corrects excessive economic inequality and precludes inordinate enduring differences among families or economic strata in wealth, power and opportunities. But it is not a sound principle of taxation when it reaches the point, as it has in India, where initiative is hamstrung, work and ability are not allowed to earn security and well-being, and endeavour and energy are wasted on the slippery slope of tax avoidance instead of being invigorated and given a momentum in the direction of constructive work and increase in national wealth.

When the citizen who might have started from scratch and by sheer dint of enterprise and hard work might have built up a prosperous business in which most of his capital is locked up, dies, the 85 per cent rate of estate duty and the incidence of capital gains tax can result in his family company passing under the control of the government or passing into the hands of less scrupulous rivals. This is the reverse of the process in progressive countries like Israel, post-war Germany and Japan, where the State started enterprises and after putting them on a sound footing, handed them over to private citizens.

Whatever economic progress has been achieved by India has been in spite of the fiscal policies of the Centre and not on account of them. With every additional dose of taxation in the recent past, some part of the zest, some part of the faith, of the people has died. Enthusiasm has been replaced by apprehension; vigour by velleity. No wonder that the tiny vitamin shots administered by the Finance Minister occasionally, have failed to revive the patient bled white by the exchequer.

Bringing into existence State-sponsored financing institutions and making State loans to private enterprises bereft of support by the investing public, cannot possibly help to redress the balance. The government's fiscal policies make it impossible for the nation to breathe freely and it is little consolation that an apparatus for artificial respiration is available for use.

The radiating potencies of taxes go far beyond mere raising of revenue. They propel tendencies which can obstruct effort,

deflect enterprise and constrict growth. Bad economics may temporarily be good politics; but politics should be behind a fiscal law, and not in front of it.

The most expensive hobby of Indians is work. The rates of income-tax on individuals, coupled with the liability to make annuity deposit, are the highest in the world at the appropriate slabs, being excelled in some brackets only by one or two countries. No other nation taxes the fruits of labour more heavily than India.

Likewise, the rates of taxation on companies in India are beyond question the highest in the world. They go beyond 70 per cent. Besides, an individual shareholder is charged to full income-tax on the dividend income he receives from the company. In no other country does the rate of aggregate tax on resident companies soar beyond 54 per cent of the total income. Most other nations levy tax on companies at rates around 50 per cent or substantially lower. Only in Chile (where the rate of tax on resident companies is 30 per cent and on non-resident companies 50 per cent), is the exceptional rate of 66 per cent imposed on two U.S.A. corporations alone, because those corporations mine copper in Chile and deplete the national mineral wealth. Thus 66 per cent is intended to be a special confiscatory rate of tax on two foreign exploiters, whereas we impose that rate and even worse on our own national companies.

In physics, there is the absolute zero of temperature, known as Kelvin zero, which is reached at −273.16°C; nothing can, even in theory, be colder. As far as rates of taxation are concerned, India has almost reached Kelvin zero in its treatment of corporate profits.

Apart from the basic injustice involved in excessive rates, our direct tax laws are strewn with other iniquities and arbitrary provisions. They remain unredressed, for a very good reason. The income-tax payers number 0.5 per cent of the total population. They do nothing more drastic than speak on the public platform, publish harmless booklets or write articles for

newspapers which take up the space badly needed to publicize the latest homily and exhortation of some powerful individual in public office to the nation. They do not fast, nor do they set fire to themselves or to trams and buses. They do not lead *morchas** or processions to the Houses of Parliament. Above all, their number is relatively so small that any injustice to them, however strident, is of no political consequence whatsoever. (By contrast, many millions have agricultural income which the Centre is constitutionally incompetent to tax and which the States are, for obvious political reasons, most reluctant to tax at all, or in any event to tax unjustly.)

Tax evasion is reprehensible: it is social injustice by the evader to his fellow citizens. Arbitrary or excessive taxation is equally reprehensible: it is social injustice by the government to the people. Tax evasion aggravates arbitrary taxation; and arbitrary taxation aggravates tax evasion. To break the vicious circle, while there must be every attempt to check evasion, there must equally be every attempt to stop whimsical taxation. There are various provisions of our income-tax law which are truly capricious. They are saturated and dripping with injustice.

In the words of a great jurist, it is not permissible to enact a law which, in effect, spreads an all-inclusive net for the feet of everybody, upon the chance that, while the innocent will surely be entangled in its meshes, some wrong-doers also may be caught.

* Sizable processions in the streets, to ventilate a grievance.

7

THE IDEAL BUDGET

The Budget of my dreams

(*The Illustrated Weekly of India,* **February 14, 1982**)

From the middle of January of each year the people willy-nilly get caught in a vortex of anxiety about the contents of the impending budget which, according to our antediluvian practice, can only be revealed at the end of February. A flurry of guesses (both educated and uneducated) are made; a chance remark of the Finance Minister is dissected and analyzed threadbare by the pundits and finally blown up out of all proportion. A torrent of advice flows in and the volatile barometer of the stock exchange adds a measure of nervousness to the already fevered atmosphere.

This year—through a network of sources who must necessarily remain unnamed and therefore regrettably unhonoured—I have obtained an advance copy of the speech of the Finance Minister, detailing epoch-making changes in budgetary strategy. The heavy veil of secrecy has, I am glad to say, been successfully pierced by a dedicated team of moles!

Here follow some extracts from the speech, marked by devastating candour:

The moment of truth has arrived. The era of chicanery and disingenuousness, of obfuscation and slogan-mongering, is over. Reality has at last overtaken us—shattering our illusions, exposing our outdated ideologies and leaving us with no option but to tread the path of pragmatism, in retreat from populism.

Past budget speeches contained hopes and aspirations which always remained unfulfilled—just as our Plans were based upon

targets which always remained unattained, except the revenue-raising targets. There was a drop of 2.2 per cent in the *per capita* gross national product (GNP) in 1980-81 as compared to 1978-79.

Beyond question, India is a gifted nation and ranks among the most intelligent, skilled and enterprising on earth. And yet, as the statistics compiled by the World Bank show, while India ranks 15th in terms of GNP, it is among the 15 poorest countries in terms of *per capita* income.

The backdrop

Facts are stubborn things and they have the impertinence to stare you in the face. Let me recall some unpleasant ones which constitute the backdrop of my budget.

The blunt truth is that our economy has lost its momentum. It is growing at a rate which would be regarded as painfully slow in a community of snails. The sluggishness of the economy is reflected in the inelasticity of tax revenues. Between 1970-71 and 1974-75, the share of tax revenues in financing the total expenditure of the Central Government increased from 43.2 per cent to 50.7 per cent. But in the subsequent period the share of tax revenues declined almost consistently to reach the level of 42.4 per cent in 1981-82.

The Reserve Bank of India has identified 24,656 units—large, medium and small-scale—as sick. And the list is lengthening. The number of persons seeking employment through 584 Employment Exchanges is rising at an alarming rate. The figure now exceeds 17 million, of whom about 50 per cent are educated. However, the total number of the unemployed must be more than three times that figure.

The latest world statistics disclose that India has the largest acreage for four crops—*viz.* cottonseed, groundnut (in shell), rapeseed and flaxseed, but has the lowest yield per hectare in all of them. In fact, for rapeseed and flaxseed, the yield per hectare has declined between 1972-73 and 1979-80.

The infrastructure

The infrastructure continues to be woefully inadequate. In 1981-82, the demand for cement is estimated to be 28 million tonnes, while the industry is expected to produce only

21 million tonnes. We have had to import 2 million tonnes of cement—at three times the price paid to the indigenous producer—from countries which 30 years ago did not have a single cement plant when in India it was already a well-established industry.

We require 137 billion units of electricity, while the total generation programme aims at 122 billion units—a shortfall of 11 per cent. In power generation, we are still utilizing less than 46 per cent of the installed capacity.

In industries, the consumption of coal per tonne of production has increased by three per cent, because of the poor quality of coal, which is often mixed with soil and stones, but nationalization has left no alternative source of supply.

The climate for foreign borrowings on government-to-government basis or from international financial institutions is none too salubrious. Almost all governments of advanced countries have become parsimonious and international financial institutions are starved of funds.

My task of enlarging the industrial base is bound to be a great deal hampered by the poor state of industrial relations. Millions of man-days continue to be lost as a result of strikes and lockouts, not to talk of go-slow tactics which are equally pernicious but escape punishment. Several labour leaders continue to operate with *goondaism** as their weapon, but they flourish under the protection and patronage of politicians. If there could be a tax on violence, muscle power and irresponsibility in industrial relations, it would give me one of the fastest-growing sources of revenue.

Openly and triumphantly, corruption stalks the land. The black market is its well-spring. The combination of excessive taxation and insensate controls constitutes the dark curtain which has fallen, fold after fold, across the bright spectacle that our republic promised to be. The country from which great entrepreneurs ventured forth and flourished all over the world has become the country of racketeers and buccaneers. Our socialism, instead of transferring wealth from the rich to the poor, has only passed it on from the honest rich to the dishonest rich.

* Violent lawlessness of hoodlums or gangsters.

In this bleak landscape of gathering gloom, I have decided to embark upon a revolutionary strategy which will rejuvenate and revitalize the economy, instead of administering the traditional dose of anaesthesia which has come to be associated in the public mind with the murky end of February.

I shall now deal with the nine essential points on which my budget proposals are based and which constitute a complete break with the past.

I: Tax rates fixed for three years

The rates of direct and indirect taxes which I am proposing are not only for one year but for the next three years—that is, for the remaining term of this Parliament. The rates will not be changed till 1985, except for the most compelling reasons arising from unexpected developments. Since the rates of income-tax are not proposed to be changed every year, I have discontinued the practice of prescribing them by the Finance Act and have included them in the Income-tax Act itself. I know that I am depriving myself (or my successor) of the profound psychological satisfaction of being able to keep one-seventh of the human race on tenterhooks on the traditional budget day; but I am convinced that, without stability in our fiscal laws, all planned growth is impossible.

I propose to bring a comprehensive Bill before Parliament to reduce the Income-tax Act to about one-fourth of its present size by excising what is useless and simplifying what is useful; and I propose to have the same type of radical surgery performed on the other statutes dealing with direct and indirect taxes. These changes, which will be made expeditiously in the course of the current year, are calculated to put the fiscal laws on a stable basis, obviating any further amendments till 1985. The same discipline will be observed by the rule-making authorities. The nation will hereafter be spared the maddening consequences of the rule-making exercises which up to now have been undertaken by the Central Boards of Direct and Indirect Taxes once every four or six weeks.

II: Government must live within its means

The past budgets used to estimate first the expenditure and then decide upon the ways of raising the resources. This is the

first budget which has started by charting the available resources and then planned for reduced expenditure within the estimated means.

Over the years the Government of India adopted a Micawber style of living, with little control over expenditure and with the touching faith that something will "turn up". Budgets of independent India have vindicated with a vengeance the validity of "the law of growing public expenditure" enunciated by the economist Adolph Wagner as far back as 1863.

In my budget proposals for 1982-83, there is no deficit either on capital or revenue account. My fundamental thesis is that the government has no right to live beyond its means—and beyond yours and mine. I have pruned governmental expenditure ruthlessly. One of the small steps in that direction will be reduction of the bloated bureaucracy. There are no fewer than 8.8 million employees of the Central and State Governments who are merely concerned with administration, as against 7.2 million employees in organized industry in the private sector. Economic stagnation is the inevitable consequence of such disproportion between productive and unproductive jobs. There will be a total ban for five years on fresh recruitment in the administration section of the government, except in the top cadres. This would mean that, if 2 per cent of the government employees retire in a year, in five years' time the government staff would be reduced by about 10 per cent—a factor which would be conducive not only to economy but, more importantly, to efficiency of administration.

III: Massive tax cuts

Taking human beings as I find them, I recognize that a man will work for himself and his family as he will work for no one else. In its bravest contests with the primordial forces of human nature, the law can never be the victor.

I propose to apply the fiscal stimulus and secure fast economic growth through tax cuts. While reducing the tax rates, I shall get the revenues to grow by increasing production and raising the levels of income. I have taken credit for substantial increases in revenues from excise, customs, income-tax and corporate tax.

I propose to increase the exemption limit for income-tax from Rs. 15,000 to Rs. 20,000 and for wealth-tax from Rs. 1,50,000 to Rs. 3,00,000. These exemption limits and other important tax reliefs will be automatically indexed by reference to the rate of inflation when it exceeds 10 per cent.

I have reduced the rates of taxes both for individuals and for corporations all along the line. The maximum marginal rate of corporation tax for domestic companies will be 40 per cent; and for individuals it will be 50 per cent. The Sixth Five Year Plan says: "In a large number of areas, our capabilities are almost 20 years behind those in the advanced nations and also behind those established recently in some developing countries. Reduced taxation will enable companies to generate the resources needed to modernize their plants and make technological improvements to increase production."

While making the massive reduction in tax rates, I have also abolished the piddling deductions and rebates which cluttered up the statute-book. In the financial year 1978-79 (the latest year for which data are available), 41 different types of deductions and rebates were allowable under different sections of the Income-tax Act. However, the aggregate amount of those deductions and rebates was only Rs. 305 crores and the amount of tax relief was a paltry Rs. 65 crores.

I cannot forget that industry contributes 79 per cent of the Central Government's revenue, excluding the direct taxes paid by individuals employed in industry. Thus the resources of the Central Government are crucially dependent upon the health of industry which needs to be promoted by a nutritive budget.

IV: Stealing from the future

Living on excessive borrowings is really nothing but stealing from the future. In 11 years from 1970-71 to 1981-82, the outstanding public debt (external and internal) of the Government of India expanded from Rs. 14,043 crores to Rs. 46,776 crores. If to this are added the unfunded debts—that is, small savings, provident fund balances, etc.—the net liabilities of the Central Government now aggregate to Rs. 67,489 crores. This means a burden of almost Rs. 1,000 on the head of every man, woman and child—in a country in

which 40 per cent of the population are never able to save Rs. 500 in their whole life.

In six years from 1970-71 to 1976-77, the internal debt expanded by Rs. 7,056 crores, but in the next five years between 1976-77 and 1981-82 it rose enormously by Rs. 19,938 crores. The fundamental reason is the widening gap between the growth of expenditure and the growth in tax and non-tax revenues. Thus, between 1970-71 and 1976-77, tax (net) and non-tax revenues increased by Rs. 5,397 crores, but government expenditure increased by Rs. 8,155 crores. In the subsequent phase from 1976-77 to 1981-82, tax and non-tax revenues rose by only Rs. 5,588 crores, while government expenditure expanded by as much as Rs. 11,043 crores.

I view with the most serious concern the alarming growth in internal public debt at ridiculously low rates of interest for the following reasons:

(*a*) The government borrows at rates of interest far below the long-term market rates. In other words, the government procures funds at a rate of interest which is subsidized by the common man. Hence the government's outlay on commercial and manufacturing projects does not give a realistic measure of the true cost-benefit ratio of the projects.

(*b*) The commercial banks are compelled to subscribe to a sizable portion of the government securities, which reduces the banking system's profitability and results in a low rate of interest on fixed deposits and savings accounts.

(*c*) The Life Insurance Corporation, provident funds and public charities are also obliged to invest in government paper, which means that the policy-holders, salaried employees and charities are deprived of a fair legitimate return on their investments.

(*d*) The Reserve Bank of India has to subscribe to a huge chunk of government securities. This is nothing but disguised deficit financing and is the principal factor in the endemic inflation from which we have suffered so long.

(*e*) The rising burden of internal public debt also means a sharply enhanced burden of interest payments. The

aggregate amount of interest paid on the government's internal debt rose from Rs. 443 crores in 1970-71 to Rs. 2,875 crores in 1981-82. The assets created out of the borrowed monies do not generate sufficient surpluses in the form of dividends and profits for the government to pay the interest charges.

I have decided to contain within the severest limits any increase in the level of borrowings, internal or external. Surely, there must be a limit to the extent to which we are prepared to mortgage the future of this country; and I am not sure that we have not already exceeded the outside limit. Further, I have provided for a two per cent increase in the existing rates of interest on all government securities, which will enure for the benefit of all salaried employees, bank depositors, policy-holders and others.

V: The ultimate resource

The human resource is the ultimate resource of a nation. I make no apology for my determination to promote and encourage private initiative which is pejoratively called "capitalism" with a view to damning it. In formulating my budget proposals, I have tried to ensure that far more savings will be left in the private sector and with individuals than before. For every rupee earned by a shareholder in organized private sector industry, 8 rupees of tax revenues are generated for our Central and State Governments.

I cannot shut my eyes to the elementary fact that the performance of the public sector suffers grievously by comparison with the private sector, though not due to any fault of the men in charge of the public sector units. Sixty-five per cent of our industrial fixed assets are in the public sector, but they give only 22 per cent of the total industrial output. If the public sector were to yield what the non-government companies do, the Central Government revenues would increase by at least Rs. 1,000 crores per year.

VI: 'Abolition of sales tax and octroi

The elementary truth, most often forgotten, is that a nation's progress depends mainly on the extent to which the people's time and energy are released for productive purposes,

instead of being frittered away in coping with legal inanities. The full potential of the people must be unleashed to create national wealth. Few levies have been so much responsible for criminal waste of human time and energy as sales tax and octroi.

The more numerous the points at which taxes are collected, the greater the scope for corruption and evasion, resulting in diminution of public revenues.

The lucky circumstance that the same party is in power at the Centre and in the overwhelming majority of the States has enabled us to coordinate with the State Governments in evolving a scheme under which sales tax and octroi will be abolished altogether and, instead, an additional excise duty to be levied by the Centre will serve to raise the resources which will be distributed among the State Governments and the local authorities.

VII: Human development

Investment in human development is more productive than investment in physical assets and, moreover, it leads to a faster rate of national growth. We have paid too little attention to human development in the past, particularly in the fields of education, medical and public health, nutrition and family planning. In these areas, I have provided for very substantial outlays. We shall have a monitoring system to make sure that the amounts are not merely allocated and spent, but that they are fruitfully and productively disbursed. The task of administering these funds will not be in the hands of politicians or ill-paid civil servants, but will be entrusted to private organizations with a proven unblemished record of public service. No more will a 100 million man-days be lost every year in merely fetching drinking water.

Roads are the arteries of the nation—they constitute the road to economic growth. Today as many as 4,07,297 out of 5,75,936 villages—that is, about 7 out of 10 villages—remain unconnected by all-weather roads, while 3,14,470 (55 per cent) of all our villages do not have any road link at all.

I am unable to see how any state which has any pretensions to practise true socialism can possibly refute the claim of industry that its social responsibilities require it to look after

the education, health and general welfare of the people of the locality in which the industry flourishes. I propose to amend s. 37 of the Income-tax Act to provide that any expenditure incurred by an assessee on construction or repair of roads or on other items of public welfare would be fully deductible for tax purposes. I believe that human development would be impossible unless private citizens are associated with this great cause and are given fiscal incentives to promote it.

VIII: Incentives for exports

The trade deficit in 1981-82 will exceed Rs. 5,000 crores (it was Rs. 5,728 crores in 1980-81), principally because of our poor export performance.

No solution is afforded by merely taking foreign exchange loans to tide over the crisis and passing on the burden of repayment with interest to the future. The real choice before us is either to push up our exports vigorously or be a defaulter in a few years in respect of our foreign exchange obligations. By various changes in the law, I have provided for streamlined procedures which will remove altogether the element of fiscal levies which makes our goods uncompetitive in the world market. This, coupled with very liberal new incentives and a stable export-import policy, should enable us to have a favourable balance of trade in two years.

IX: Partnership between the government and the people

I believe that the Union Budget should not be an annual affliction but should partake more of the nature of the presentation of annual accounts of a partnership between the government and the people. It is impossible to expect from the people good faith and acceptance of their moral duty to pay taxes, unless the government first proves itself to be fair, considerate and reasonable.

I am aware of the legal possibility of Parliament retracing its steps in the future and undoing what this budget attempts to do. The people must make sure that the forces of ignorance and obscurantism are never allowed to put the clock back again. It is necessary to undertake now and in right earnest the task of teaching our law-makers economic wisdom in place of economic dogma, and of educating them in the

techniques of the creation of wealth. To this end, I have proposed an amendment to the Income-tax Act to provide that any expenditure incurred by an assessee in undertaking the aforesaid urgent and imperative task of educating the law-makers will be fully deductible in computing income under any head.

I am happy to stake my entire political future on this budget which opens a new epoch. Of its immensely beneficial effects on the nation's economy by the end of the three years—that is, 1985—I am as confident as I am of the fact that Halley's comet will reappear in that year.

What should the next budget be?

(*The Illustrated Weekly of India,* **February 23, 1975**)

A budget can be like a scourge—but a cut above the plague in that its visitations are with methodical and predictable regularity. Our unbroken tradition in recent years has been to specialize in budgets of this category. Punitive taxation has become a religious ritual. Any opposition to it, on grounds of logic and experience, is branded in certain quarters as the handiwork of vested interests and the manifestation of reactionary forces.

To say that India is facing an economic crisis is, as an exercise in understatement, on a par with the observation that assassination is an extreme form of censure. Countries, like companies, are best administered when they employ the well-established technique of "management by objectives". The budget indicates whether our objective is the demagogic socialism of the banana republics, the style of socialism which has unfailingly ensured that banana republics remain banana republics, or whether our objective is the ebullient type of socialism which has transformed Malaysia and Singapore into countries of dynamic growth and strong currency.

In our country, inflation, poverty and unemployment are symptoms of the same economic disease. The cumulative causes of the malady are: *first*, the government living beyond its means, as is evidenced by the fact that during the last three years the supply of paper money expanded by 51.8 per cent while the real national income increased by only 6.2 per cent; *second*, nationalized industries into which we have sunk thousands of crores with hardly any return; *third*, while we have abolished child labour, we have the new problem of child labour put in by lazy adults; and, *last*, the rate of growth in industrial and agricultural production has been reduced to an insignificant level. In a sick economy, the number of lame ducks increases. And lame ducks are prone to produce lame ducklings.

Every economic problem facing us can be surmounted by sound policies and strong leadership. It is true that the budget by itself cannot afford a complete solution. Running a nation's economy is not like playing a penny whistle; it is like playing a symphony where you have to use all the instruments. But it is the budget which, more than any other instrument, sets the tone and exults or depresses the mood of the nation for the year. Further, a government which has enough vision to introduce an imaginative budget would presumably have sufficient understanding to make it part of a total package of pragmatic economic policies.

Productivity is the best answer to our bewildering problems and incentive is the unfailing key to productivity.

There can be no growth without investment and there can be no investment without profits. The crucial point is that the rates of personal and corporate taxation must be reduced to a level where industrial enterprises can make fresh investment out of their own resources, instead of having to scrounge for funds from reluctant banks which ask for staggering rates of interest or from financial institutions which impose the condition that they would be entitled to convert their loans into equity capital on terms which virtually involve partial confiscation of the existing shareholders' equity.

The significant point is that tax revenues have not failed us. It is the governmental management of the revenues which has failed our people. Since 1960, tax revenues have increased 5.3 times. Normally, in an expanding economy, such a buoyancy of revenues should have resulted in the developmental outlay increasing at least eight to ten times during the period of fourteen years, but the outlay increased only four times.

The feeling of insecurity, bordering upon panic, has been aggravated by laws for nationalization of coal-mines, textile mills, etc. under which all assets of the nationalized companies are taken over but none of their liabilities; and, further, all the creditors of the companies are statutorily deprived of every charge or security which had been created on the companies' assets. The net result is that banks which had advanced moneys

to the companies have lost their principal, interest and security; debenture-holders have lost their entire capital; ex-employees of the companies who retired before nationalization have lost their right to pension and other dues; and traders have lost the price of goods which had been given on credit.

Thus innumerable innocent citizens have found their property virtually confiscated outright as a side-effect of the law expropriating the companies. These companies cannot discharge their liabilities because all their assets are gone and even the derisory "amounts" due to them on nationalization are to be paid to the Commissioner of Claims who is not appointed for years. If innocent third parties had been so deprived of their rights and assets by a private citizen, thuggery would have been the right word to describe such action.

At the moment of such a crisis, the budget can undoubtedly give a shot in the arm of our ailing economy. It is a total misconception to think that because we have so few income-tax payers in a vast population, whatever is ordained by the budget in the field of direct taxes is of little consequence to the nation at large. Such provisions of the budget affect the entire nation. The level of direct taxes decides whether there would be large-scale evasion resulting in a parallel economy or whether the most gifted individuals in the country can work for national development without personal financial worries.

Corporate taxation and controlled prices determine whether production would increase so that the masses may get wage goods at reasonable rates, or whether there would be scarcities and shortages resulting in an enlargement of the black market. The profits after taxes left with the corporate sector have a great bearing on the task of alleviating unemployment by expansion resulting in the creation of new jobs. In short, the structure of direct taxes has an impact on all the three basic issues of inflation, poverty and unemployment.

It was Dr. Gunnar Myrdal who observed that most often it is easier to carry out a big rapid change than a series of small gradual changes, "just as a plunge in the cold water is less painful than slow submersion". The new budget should make big rapid changes in certain crucial areas.

Comparative figures prove beyond doubt that the Indian corporate sector is the most heavily taxed in the world. The maximum marginal tax rate of 70 per cent, inclusive of surtax, which is levied on an Indian public domestic company, is the highest known to any developed or developing country. A survey of 44 important nations shows that the maximum marginal tax rate on corporate profits is in the 15-30 per cent band in four countries, 30-40 per cent in twelve countries, 40-50 per cent in fourteen countries, 50-60 per cent in ten countries; and over 60 per cent in four countries only, including India. But whereas in India the dividend income is taxed at the full income-tax rate (apart from the initial exemption) in the hands of the individual shareholder, in most other countries the corporate profits distributed as dividends qualify for tax relief either in the hands of the company or in the hands of the shareholder.

Depreciation should be allowed to be written off at any rate in any year to suit the requirements of business, as is permitted under the laws of the U.K. and other countries.

The rates of personal taxation should be reduced, particularly in the slabs which affect the middle classes, to take care of the depreciation of the rupee. Many countries have introduced automatic adjustments in tax rates for inflation: for example, Chile in 1954; Brazil in 1961; Denmark in 1969; the Netherlands in 1971; Canada in 1974. If such adjustments are not made, higher rates of tax would in effect be imposed in all the slabs in real terms.

Indirect taxes, like excise, affect the common man and increase the cost of living even for those who live below the minimum subsistence line. Since 1969, more and more articles are being subjected to customs and excise duties on an *ad valorem* basis—*i.e.* as a percentage of the wholesale price—instead of being charged to fixed or specific duties. Revenues by way of specific duties can increase only with the volume of industrial production, while *ad valorem* duties go up with a rise in prices (and lead, in their turn, to higher sales taxes) without any increase in the national product. They are thus directly and clearly inflationary.

In 1973-74, industrial production increased by only 0.5 per cent but excise revenues increased by 13 per cent. During

the current financial year (1974-75), industrial output will not fulfil the government's pious hope of 3 to 4 per cent increase but excise revenues are budgeted to increase by 15 per cent. Today, as much as 40 per cent of excise revenues is collected on an *ad valorem* basis. The new budget should reverse the dangerous trend.

Apart from introducing some measure of fairness and justice in the incidence of tax, there are two other respects in which the new Finance Bill can be a milestone in our fiscal history. *First,* the Finance Minister would be rendering a signal public service if he brought about some stability in fiscal laws and put an end to the practice of perennial parliamentary amendments and the ever-changing forms and regulations enacted in the exercise of the rule-making power. It is imperative that we stop the torrent of indigestible verbiage which passes as the fiscal law of India. In the words of a Canadian professor, if two hundred years ago men revolted on the principle that taxation without representation is tyranny, then today men may rise in righteous wrath because taxation with representation but beyond human comprehension is even worse.

Secondly, at the International Tax Conference held in Singapore in 1974, the tax experts pointed out that a tax administration, which disposes of appeals promptly and reaches a fair and final settlement speedily, is itself entitled to be classed as a tax incentive. The deplorable record of India in this connection was cited as a warning.

Lakhs of tax cases are clogging the High Courts and the lower appellate authorities. The next Finance Bill should provide an option to the citizen to bypass all the existing procedures and go before a specially constituted Tribunal whose decision would be final and non-appealable. That Tribunal would not write judgments or give reasons but merely state its final decisions. If men of proven ability and integrity, specialized knowledge and sturdy independence, are appointed to constitute such a forum, thousands of pending appeals could be withdrawn and referred to the Tribunal—which would be able to dispose of a large number of cases every day, since their time would not be taken up in writing judgments or reasoned orders.

As this procedure would be purely optional, it would be perfectly constitutional and, in the vast majority of cases, it would be amply satisfactory from the viewpoint of the revenue as well as the taxpayer.

In the final analysis, the basic question facing the Finance Ministry is whether it will continue the attempt, in the words of Winston Churchill, "to build a society in which nobody counts for anything except a politician or an official, a society where enterprise gains no reward and thrift no privileges".

If I were the Finance Minister

(*The Illustrated Weekly of India,* **March 12, 1972**)

My budget would have no political sex appeal but it would set out to achieve realistically four main objectives:

(*i*) to increase the gross national product and transmute the people's spirit of enterprise into national wealth;

(*ii*) to create jobs and enlarge the availability of productive work;

(*iii*) to regulate reasonably the distribution of income; and

(*iv*) to revive public morality and reward integrity and industry.

I would aim at opening a new chapter in India's fiscal laws and practice. *First,* the budget fever would become a thing of the past. A broad pattern of taxation to be followed during the remaining term of Parliament would be indicated—and would not be departed from except in unforeseen eventualities—so that the nation can plan ahead with zest and confidence.

Secondly, the laws would be redrafted so as to make them short, simple and intelligible. The present ridiculous practice of annual amendments would be given its quietus. The considerable financial damage to the legal and accountancy professions would be compensated by the fact that the people's time and energy would no longer be dissipated on tax complexities but would be channeled in the direction of productive labour.

To tax and to please is not given to men; but to tax and be rational is.

Since the birth of our republic 22 years ago, the most important generator of tax revenues—excise, income-tax, sales tax—has been industrial production. The greatest beneficiary of an increase in the gross national product is the government.

For every rupee that went to the shareholders in the form of dividends and ploughed-back profits, the Central Government alone secured Rs. 3.47 in 1965-66, Rs. 3.46 in 1966-67, Rs. 4.52 in 1967-68 and Rs. 4.99 in 1968-69, making an annual average

of Rs. 4.11 for four years. Over and above this, was the contribution made by the corporate sector to the State Governments by way of sales tax, electricity duty and other levies.

The myth in current economic folklore is that corporate growth promotes inequalities. In reality, corporate growth not only promotes the economic development of the country and enlarges employment opportunities, but it also maximizes the potentialities of social justice by serving as the largest single well-spring of resources for the government for undertaking measures of social welfare. Hence my budget would avowedly serve as a fiscal stimulus to the corporate sector.

I would substantially reduce the rates of income-tax on companies. Of the 141 countries whose rates of corporate taxation are available, 131 have the maximum rate of 50 per cent or lower in the corporate sector; and again, 92 out of the 131 have corporate rates not exceeding 40 per cent. The only countries whose corporate tax rates go beyond 60 per cent, as they do in India, are Sudan (62 per cent), Faroe Islands (87.6 per cent) and Burma (99 per cent), and in none of these countries is there any corporate industrial activity worth the name.

India can hardly afford the luxury of macrophobia or a persistent allergy to the so-called "big business" which is Lilliputian by modern standards.

My budget would let slogans, ideologies and aspirations doze for a bit and get on with the practical objective of pulling India out of the category of low-growth countries. The whole emphasis would shift from the government to the people. The inarticulate major premise would be that when poverty is abolished in our free democracy, it will be by the initiative and exertions of our people, and not by bureaucratic red tape or by taxation which strangles enterprise.

In Canada the Royal Commission on Taxation recommended that the highest rate of tax on individuals should be cut from 80 per cent to 50 per cent. Dr. Erhard, author of the German economic miracle, prescribed the maximum marginal rate of 50 per cent for personal taxation. It is no coincidence that, of the 18 developing countries of the world, the five countries

which showed the fastest rates of economic growth in Asia during the 1960s—Iran, South Korea, Taiwan, Thailand and Singapore—are also the countries which keep the maximum marginal rate at 50 per cent.

It is my firm conviction that no nation living today or which has flourished in any past historical epoch would remain honest under the giddy rates of direct taxes which prevail today in India. Our people, like any other, fall into three segments:

(*i*) those who would be honest, however heavy the burden;

(*ii*) those who would be dishonest, however light the burden; and

(*iii*) those (and they constitute the overwhelming majority) who are basically not dishonest but the nature of whose response to the law is conditioned by the quality of the law.

Our tax legislation ignores the first class, is preoccupied with the second, and alienates the third.

Following the example of Japan, I would have a special provision to alleviate the burden of tax on salaried employees and on aged assessees. There would be liberal exemptions in respect of perquisites and allowances enjoyed by employees. There would also be a fair provision for "depreciation of useful life", whereby a person, as he ages, is given a progressively higher exemption from income-tax. Further, there would be an exemption in respect of every dependant maintained by an assessee.

It is a strange variety of socialism which wholly exempts from tax substantial profits from livestock breeding, poultry and dairy farming, but not the exiguous income from the nation-building activity of education. I would give special tax reliefs to teachers and scholars whose meagre earnings are derived from their work in colleges and universities.

The Constitution does not permit the Union to tax agricultural income. The net result is that a small section of the urban population—a minority of a minority—bears almost the entire burden of personal taxation. To remedy this injustice, at least partially, I would enact that agricultural income should

be taken into account for the purpose of determining the rate applicable to non-agricultural income.

The popular beliefs—that "nobody pays these high taxes anyway" and that "only the rich are affected"—are, like many other popular beliefs, hopelessly wide of the mark. As Professor Kaldor once asked: "If nobody pays such high paper tax rates, why have them at all?" More and more men, who are basically honest, find the rewards of tax evasion irresistible. Each budget has narrowed the gap between the honest rich and the poor, and widened the gap between the dishonest rich and the poor. Black money is India's parallel economy and bids fair to become one day the paramount economy. The honour for enthroning black money must be divided equally between our industrial policy which believes in perpetuating shortages and our fiscal policy which believes in putting a strain on public integrity which it cannot possibly bear.

The rich pay *at* the high tax rates; but the entire nation pays *for* the high tax rates. The invisible social cost of crushing taxation is the further debasement of the nation's character, debased as it is now. Tax evasion corrupts the whole society, since it creates inflation by wasteful expenditures; enables black money to be used to bribe and thus pervert public administration; and siphons savings from productive to largely unproductive sectors.

The innocent and credulous citizen of India does not realize that black money is the largest single source of funds available to political parties for fighting elections; and the politicians who cry the loudest against the evils of black money are not reluctant in the least to help themselves at this perennial spring. Our minds are remarkably well conditioned to the smog of cant, hypocrisy and humbug which envelops public life.

8

UNION BUDGETS SINCE 1957

A supreme ironic procession

(Annual public addresses in Bombay and other cities, arranged by the Forum of Free Enterprise)

The Union Budget 1957-58

1757 and 1857 were significant years in the history of India. 1957 witnessed a landmark, not in the political history of this country, but in its economic and taxation laws. We have, almost without realizing it, passed through a revolution so far as taxation laws are concerned.

Among the new taxes, we have the wealth-tax, the expenditure-tax, the capital gains tax,—and the gift-tax which will come into force next year.

The expenditure-tax is a novel mode of taxation and it is one of the ironies of history that a nation which has so little to spend should be the first to levy a tax on expenditure. The epitaph which a famous English peer wrote for himself reads:

> *"What I gave, I have.*
> *What I spent, I had.*
> *What I left, I lost."*

The taxation structure in India is meant to hit you whichever of the three alternatives you choose to adopt. What you give by way of gift to others you might continue to have even after your death; but irrespective of the ethical value of large-heartedness, there will be a tax on that which you have gifted. What you spent, you had; but for the pleasure of having expended your own income, you are again subjected to tax. What you left, you lost; and you would lose it not merely to your heirs, but also a substantial slice to the State in the form of estate duty.

The vicious expenditure-tax introduced this year is not to be confused with the ideal form of income-tax which is tax on expended income. *First*, tax on expended income would be tax on such portion of the income as is not saved but spent and would be a modified version of income-tax as we know it today and, *secondly*, it would fall only upon such expenditure as is incurred out of income. On the other hand, the expenditure-tax introduced this year will be over and above income-tax on all income, spent or saved; and will be attracted by all expenditure including expenditure incurred out of capital or borrowed moneys.

A system of law is growing up in this country with more and more powers conferred on government officers which can only be described in the words of Lord Hewart as "The New Despotism", and which creates, in the words of A. P. Herbert, "The Despotic Executive". It is difficult to come across any new piece of legislation which does not leave decisions, of the most far-reaching effect from the viewpoint of the individual, to the government, which often in practice means a not-very-highly-placed administrative officer. The wide room for harassment and corruption which such a legal system provides, needs no underlining. This regimentation of a nation's life by executive action is not peculiar to this country; it is growing all over the world. But the mischief is imponderably greater in a country like India where the masses are illiterate, unconscious of their civil rights, and public opinion is not mobilized or educated.

The Union Budget 1958-59

The cardinal fault of the new pattern of taxation is its absolute instability and uncertainty. Not a year passes—sometimes not even half a year—without some material changes in the Income-tax Act. Nowadays that Act is like a railway ticket—good only for one journey in time, from the 1st April of one year till the 31st March of the next and sometimes not even for the whole of that journey. Both the substantive and procedural provisions seem to belong to a shadowland where they have a frail hold on existence.

Some of the provisions of the new taxation laws take no account whatever of the basic principles of justice and fair play. A law does not become any the less tyrannical because it has been passed by the elected representatives of the people. Montesquieu said two centuries ago that ministers often levied taxes to satisfy their own crankiness. This is true as much of democracies as of dictatorships.

The bewildering complexity of tax laws is coupled with the hyper-technical spirit in which the laws are being administered. The words, "The Letter Killeth" should be inscribed over the portals of every income-tax office.

The integrated pattern of taxation is the child of abstract theory and a doctrinaire approach. One wishes that sometimes the government would take counsel from men of humanity, vision and imagination, men of practical experience of human affairs and perceptive understanding of the national character.

On this point there is a perceptive passage in Charles Morgan's *Liberties of the Mind* which I shall reproduce here. Where problems of deep policy are concerned the government takes advice. Commissions are set up, ministers appoint advisory councils to examine a particular problem and report back. Whoever looks carefully at the constitution of these bodies will note that one element is nearly always absent—a humane counsellor appointed for his quality of humanism. Commissions and committees generally include (and rightly include) experts on various aspects of the problem to be examined. One or two "fancy" members are sometimes added. Why is no humane

counsellor appointed, a philosopher, a historian, a scholar, a painter—yes, even a poet or a story-teller—the whole value of whose presence would be that he is not a statistical expert and does not represent a vested interest, a party or an association? He might ask the questions, leading to the "real issue", which the others forgot to ask, for it is of the essence of humanism and of all art to ask questions governing the relationship of reality to appearances and of truth to half-truth. Extremely adroit princes did not regard as valueless the opinion of Voltaire, and the author of *Paradise Lost* was not considered a helpless dreamer. If such judgments were of value in days when the world was comparatively simple and statesmanship leisurely, of how much greater value would they be today!

But our tax laws overlook the human and humane element altogether. The statistical experts can formulate on paper a beautiful integrated pattern of taxation but completely overlook that their new taxes might provide additional incentives for tax evasion to the dishonest, and disincentives to hard work and thrift to the honest.

The Union Budget 1961-62

In 1791, Genoa issued coins with the inscription, *"Time is precious: Work and save: Idleness is robbery"*. This motto has little appeal under a system of taxation where the fruits of work and the results of saving are both taxed at savage rates.

Today the position is that despite the integrated pattern of taxation, tax evasion has not been checked. As Justice Harman observed in *Moorhouse* v *Dooland* (36 T.C. 1, 7), there is a growing tendency on the part of the government to spend time catching the financial sprat, while the mackerel swims free in the ocean. If the income-tax, wealth-tax and expenditure-tax returns of some of the wealthiest men in India were made public, the nation would see for itself how illusory the hopes of the authors of the new pattern of taxation have been.

Czar Peter I once published an edict by which he forbade any of his subjects to offer him a petition until two duplicates had been first presented to his officers. On refusal of justice by the officers, the petition could be presented to the Czar, but on pain of death if the petitioner was held to be wrong on merits. History records that after the publication of this edict, no one ever addressed a petition to the Czar. Being unresponsive to public opinion is an infirmity which the elected representatives of the people often share with the Czar.

The Union Budget 1962-63

The annual Union budgets remind one of the words of the American wit that the difference between the tax collector and the taxidermist is that the taxidermist at least leaves the hide. The painful truth is that New Delhi needs not merely a breath of fresh air but a blast of fresh air to sweep away cobwebs of wrong fiscal thinking.

The new direct taxes and their increasing rates are portents of the growing desire of the State to tax not wisely but too well.

The States emulate the deplorable example of the Union in ignoring public opinion and the advice of high-powered committees. For instance, the Law Commission had recommended that court fees should be abolished. The governments of different States actually increased court fees after the Law Commission's Report. This is typical of the way the Union and State Governments function in this country. Not only is public opinion completely ignored but even the unanswerable reasoning and conclusions of high-powered commissions are flouted unless they happen to coincide fortuitously with the preconceived notions of some individuals in office.

The Union Budget 1963-64

The increases in tax rates proposed by the budget are directly contrary to the thinking of leading economists and the unfailing experience of countries which have increased public revenues and the gross national product by reducing tax rates. *The Times,* of London, in a powerful editorial in its issue of January 10, 1963, observed, "The tax system needs a major overhaul to sharpen incentives." The National Institute in its Report submitted to the U.K. Government recommended a cut in taxes as the only way to enhance the rate of growth from 3½ to 5 per cent per year. Mr. D. L. V. Rowe, the British expert on taxation and company law, has commented on the adverse repercussions of the high level of personal and corporate taxation on enterprise, initiative and good management. The weekly, *Time,* (January 11, 1963) observed that the soak-the-rich tone lingers on in income-tax law and it is high time the tune was changed. It pointed out that the way of the world is such that the really rich do not actually pay the confiscatory top rates, as the rich can arrange matters so that the money rolls in to them in forms that are partly or entirely sheltered from income-tax. The most soaked victims of the present tax structure are taxpayers of the middle class who are bucking a headwind of very high tax rates; and as they approach their earning peak, they find themselves paying tax rates which, measured by the percentage of gross income, are of the same order as those actually paid by multimillionaires. The ease and security that come from sufficient savings remain out of reach.

The tax on registered firms is sought to be further increased by a surcharge of 20 per cent. In India a registered partnership has to pay income-tax, and the individual partners have to pay income-tax over again on their shares of profit received as partners. This is a blatant case of double taxation. Nowhere else in the world does the same government charge the same income in the hands of the same individuals to the same tax twice over. Unlike a limited company, a partnership is not a separate legal entity. Therefore, while there is a legal basis for taxing a limited company on its profits and again taxing the

shareholders on the dividends declared out of such profits, there is no reason or justification whatever for taxing a partnership and then the partners over again. The Law Commission—headed by the Attorney-General of India and consisting of Supreme Court and High Court judges, Advocates-General and eminent lawyers—pointed out the injustice of assessing a partnership and again assessing the individual partners on the same income. But the government, far from honouring the strong recommendation of the Law Commission to abolish the double levy, has sought to increase the rate of tax on registered firms.

The Union Budget 1966-67

The one good thing about this year's budget is that it is possible to deal with it on the plane of reason; no taxes have been levied at the whim, fancy or humour of the Finance Minister. On the contrary, taxes which were rich as irritants and poor as tax-raisers, like the expenditure-tax and the tax on bonus shares, have been abolished. Secondly, some injustices, like the unconscionable rates of gift-tax, have been redressed. But it is the third feature of the budget, *viz.* increased taxation, which is bound to result in the budget proving to be depression-oriented, instead of proving growth-oriented as claimed by its authors.

The solution of our budgeting problem, which would avoid both deficit financing and heavier taxation, cannot be found by the Finance Minister alone but it can only lie in concerted action by the entire Union Cabinet.

While the limits of our resources are objective and painfully apparent, our needs are what our Planning Commission subjectively says they are. Planning according to our needs has been tried and has dismally failed. Planning according to our resources remains to be tried. Our economy, which has been badly mauled and disfigured, has great recuperative strength and will respond surprisingly well to generous and realistic treatment.

The Union Budget 1967-68

In India we have perfected the art of introducing budgets which aim at making all shades of political opinion unhappy and ensuring that they are made unhappy to the same extent.

You do not have to read Lord Morley's book, *On Compromise,* to know that life is full of compromises. The Finance Minister has to compromise between economic wisdom and political expediency; and critics of the budget have to compromise between their notions of economic wisdom and their personal regard for the Finance Minister.

The Rann of Kutch is a brackish waste where the lone and barren sands stretch far away; and the depressing scene is only relieved by the *Bets* which are elevated tracts supporting life and vegetation. The picture of the Indian economy is not altogether dissimilar.

The Union Budget 1968-69

Every budget has legal effect for only one year, but its economic consequences endure for years. A nation continuously moulds and shapes its future as it lives through the present and meanders from one budget to another.

The depressing fact is that even after this "mild" budget, India will still remain the Highest Taxed Nation, so far as direct taxes are concerned. When the government tries to refute this case, one is tempted to say that just as no taxation without representation is one principle of democracy, the other is—no taxation with misrepresentation. There are several socialist countries in the world, but India is the only country where income-tax and wealth-tax can together amount to more than the total income.

Comparative data, some of which are collected in the Seventeenth Report of the Public Accounts Committee published recently, establish beyond doubt that, on the whole, we impose heavier tax on honest enterprise and endeavour than any other country.

Last month the Institute of Chartered Accountants in the U.K. made a representation to the Treasury that the tax law of that country had become so confusing that it was difficult even for professional men to interpret the law and to offer sound advice to their clients. The position is much worse in India.

In recent years the administration of tax laws has run down very considerably. Unnerved by the perpetual talk of corruption in public life, and by excessive control and undiscerning criticism from the top, the officials are reluctant to shoulder responsibility and to proceed under their own steam. The Income-tax Officers are given more and more powers, and allowed less and less initiative and independent judgment. The environment and setup are highly conducive to the general tendency to record conclusions adverse to the assessee and let the law take its course—its painfully prolonged and tiring course. The prick of official conscience is assuaged

by the knowledge that the wronged assessee has the right of appeal and reference.

No doubt, vast talent, high administrative ability, and capacity to do full justice between the State and the citizen, are all there in the income-tax department. But their possessors are the victims of a pernicious system which prefers that such fine qualities should be kept latent and which breeds the feeling that it is dangerous to use initiative or discretion in favour of the taxpayer.

The Union Budget 1969-70

As usual, the Finance Minister's budget speech is more stimulating than his budget proposals. The speech has been couched in a lighter vein, though most citizens would have preferred lighter taxes.

A budget should be moulded by the needs of a nation, containing within it the seeds of economic growth. But unfortunately, our budget is the prisoner of (*a*) the unapproachability of the agricultural sector, (*b*) the inefficiency of the public sector undertakings, (*c*) the irrepressibility of the Central Government's expenditure and (*d*) the indiscipline of the State Governments.

It was a pure historical accident which resulted in agricultural income being outside the purview of taxation by the Centre. Income-tax was first levied in India by James Wilson, the Member for Finance, who presented his Budget Estimates on February 18, 1860. The first levy of income-tax in that year embraced agricultural income also. When tax on non-agricultural income was replaced by a licence tax, agricultural income was assessed to a corresponding burden in the shape of a cess. It was the continuing existence of this cess that was responsible for the exemption of agricultural income in the Income-tax Act of 1886 which reimposed income-tax after its earlier repeal. The burden of the cess on agricultural income has since been removed, but the anomaly of exempting agricultural income has continued. Since the urban vote is of little importance to politicians, and since there is no comparable strong lobby within Parliament for industry and the urban sector, the level of taxation on the industrial sector which effectively retards the economic development of the country meets with little political resistance. On the other hand, in Parliament the farm lobby is the strongest lobby. That explains why, when the urban population is subjected to an excessive burden of taxation, any suggestion for levying tax on the agricultural sector meets with concerted and strenuous opposition.

I am not suggesting that agricultural income or wealth should necessarily be taxed. If at least one section of the

Indian population is free from the burden of direct taxation which is today stifling industry and cramping economic growth, I am happy that that section of my fellow countrymen enjoy the good fortune. But I am suggesting that the facts and figures must be seen in the clear light of reason, unclouded by undesirable political overtones by those who criticize the proposal to levy wealth-tax on agricultural lands and who charge the budget with partiality towards business and industry.

There is a story of a monk who belonged to a religious order where the discipline was that one should not complain even in the most trying circumstances. The monk was seated at dinner and found a mouse in his mug of beer. He loved his beer and was at his wits' end to find a way of letting his predicament be known without committing a breach of discipline. He called the Father Superior and pointing to his neighbour said, "Father, there is no mouse in my brother's mug of beer"! This is the spirit in which the over-taxed urban sector has to deal with the proposal to open up the agricultural front in the Union budget.

Recently, in a brilliant article, *Saving through taxation—Reality or mirage?*, Stanley Please, the noted economist, made a careful study of the facts and figures of 19 under-developed countries and came to the conclusion that the doctrine of national saving through taxation is an absolute mirage. He also pointed out how, with increase in taxation, there is a corresponding decline in the rate of both public savings and private savings. Nationalization of savings is the very worst form of nationalization.

Professor John Jewkes of the Oxford University has pointed out the dangers of the infantile belief that a government must inherently know better than its citizens what is good for those citizens and therefore all increases in public expenditure and tax contribute to the good of the individual.

Taxes are the life-blood of any government, but it cannot be overlooked that that blood is taken from the arteries of the taxpayer and, therefore, the transfusion is not to be accomplished on dictates of political expediency but in accordance with the principles of justice and good conscience.

The Union Budget 1970-71

Ancient India made a signal contribution to the growth of human civilization, — it gave a new direction to philosophy and gave imperishable expression to spiritual values. Modern India has made three contributions to civilization, — the *bandh**, the *gherao*†, and the pre-budget technique. The first is political oppression, the second is industrial oppression, and the third is well calculated to condition the public mind for fiscal oppression.

The pre-budget technique consists in making it widely known throughout the month of February that such levels of taxation would be inflicted on the people as to make them hate the very sight of money and hardly leave a shirt on their backs, so that when actually the budget is introduced with 93.5 per cent income-tax and 12 per cent wealth-tax as the maximum marginal rates, the budget evokes a favourable, and in fact a cheerful, response.

The Union budget for 1970-71 has been called an "imaginative" budget. It is only so in the sense that it imagines certain consequences to ensue from the budget which are contrary to all known motivations of human nature and all rules of sound economics.

It was Justice Holmes who remarked that most men judge things dramatically and not quantitatively. This explains the dramatically favourable general response to the budget, without quantitative analysis of the burdens it imposes and the effects it can be expected to produce on the national economy.

The human attributes in citizens which are most precious to a nation are integrity, industry and intellect, — the three "I's." The budget makes a frontal attack on all these three priceless attributes. Our governmental policies are mainly responsible for the fact that among the youths of India some of the finest brains in medicine and science, technology and business management, have chosen to emigrate and settle in other countries where they can work without irritating official restrictions and interference, and can also keep a substantial part of the fruits of their own labour.

* An attempt by militant workers to paralyze life in a city.

† Wrongful confinement of a person in authority by an undisciplined group.

The Union Budget 1971-72

The pride of place in the Parliamentary Calendar still belongs to the annual ritual of the budget.

Whereas the budget could have given the patient millions the chance of a brighter morrow, it only aims at ushering in a socialist springtime of dead flowers.

Introducing the first Indian Budget in modern form, containing the first levy of income-tax, in the Legislative Council on February 18, 1860, James Wilson said in his Financial Statement of that year, "The normal state of Indian finance may be said to be deficiency of income and addition to debt". In that Budget the rate of income-tax was 2 per cent upon incomes between Rs. 200 and Rs. 500 a year, and 4 per cent on incomes above Rs. 500. The maximum rate of 4 per cent was reduced in 1863 to 3 per cent, and in 1869 to 1 per cent. The wheel has now turned full circle. Instead of the assessee paying 2 per cent tax and keeping 98 per cent of his income, he has now to pay 98 per cent tax and keep 2 per cent of his income.

More than any other budget during the last 111 years, this year's budget is in its conception ideology-oriented, and in effect will prove poverty-oriented. The philosophy underlying the budget rests on the following major premises:

(*i*) It is enough, and a lot easier, to impoverish the rich instead of enriching the poor. "*Amiri hatao*"* at budget time is an excellent political substitute for "*Garibi hatao*"† at election time: and the public mind may be trusted to be sufficiently muddled to see no distinction between the two.

(*ii*) The laws of human nature should be treated as impliedly and effectively repealed by the laws of Parliament.

(*iii*) A citizen does not deserve to keep even a reasonable part of the fruits of his own labours. It is politically

* Liquidation of wealth.
† Removal of poverty.

expedient to have a ceiling on income, although in practice it merely amounts to a ceiling on honesty.

(*iv*) The private corporate sector needs no incentives. It should find its deepest satisfaction in the fact that while, as a result of manifold restrictions on initiation and expansion of industry, it is permitted to contribute only 8 per cent of the total national income (as against 70 per cent in developed countries), it contributes no less than 60 per cent of the direct and indirect taxes collected by the Central Government.

(*v*) The agricultural sector is politically too important to be taxed even reasonably; mounting savage taxation should be discreetly reserved for urban citizens who have no political lobby worth the name.

When the basic instincts of human nature and the deep-grained motivations of human conduct come into sharp conflict with man-made laws, it is the laws which are invariably defeated and brought into contempt. Yet in the budget speech year after year our government gives expression to the juvenile delusion that new laws and more laws are all that is needed to make men work mainly — and at a certain level, wholly — for the benefit of the exchequer.

Our laws fight a losing battle with the acquisitive instinct of man. In Russia and other communist countries, taxi drivers will surreptitiously ask for foreign exchange from complete strangers, although death penalty can be the punishment for such an act. Wise governments reasonably regulate these normal human instincts and ensure that they create open wealth for the nation. Foolish governments permit them to create black markets and black money.

Mr. T. T. Krishnamachari said in his budget speech of 1957:

"I have come to the conclusion that our existing rates of direct tax at top levels deprive the tax structure of all flexibility. It is said that they tend to diminish the incentive for work but I am aware that they encourage large-scale evasion. It is now recognized that the very high rates of direct taxation in the top income brackets in many countries of the world in practice are tolerated or tolerable only

because of considerable evasion that takes place. In other words, the high rates tend to be applied to a corroded tax base."

Again, in his budget speech of 1964, Mr. T. T. Krishnamachari stated:

"....It is worthwhile mentioning that the motivating factor behind earned incomes should not be ignored. Much of it is due to the incentive, the initiative and hard work of the earner himself, and for keeping up this effort and to enthuse the earner to greater efforts, it is necessary for him to have a feeling that at least some substantial portion of what he earns is left in his hands."

When a government, which is so unfair and unjust, complains of tax evasion, it should remember that just as every nation gets the government it deserves, every government gets the taxpayers it deserves.

The Union Budget 1972-73

Last year's budget was criticized on all hands as a crippling budget. There is not a single relief in this year's budget as compared to last year's. If this year's budget has evoked no such widespread comment, it only shows the extent to which the public mind can be conditioned to lose perspective and to accept what it has no hope of changing.

The human mind is more malleable than gold; and can be easily made to endure injustice and unfairness through prolonged exposure to such an environment. In India for centuries the people suffered the caste system with all its ugly iniquities.

Our income-tax rates go up to 97.75 per cent, and wealth-tax rates go up to 8 per cent (plus 7 per cent in the case of urban property): they virtually amount to annual confiscation of income and wealth. The burden of income-tax and wealth-tax combined, which is the highest in the world, is proposed to be continued without any abatement. It is still possible to become wealthy in India, but not by mere ability, industry or enterprise, or even by a combination of all the three. The five classes of the new rich are — tax evaders, black marketeers, bosses of co-operatives, prosperous farmers and some successful politicians.

The founding fathers of our republic conceived India as the dwelling-place of the Spirit of Liberty, where social justice would prevail and the nation would be enriched by the enterprise and labour of its citizens. It is a fundamental principle of social justice that labour and enterprise should be fairly rewarded.

The crucial question is — will the budget achieve the goal of economic growth with social justice? The Finance Ministers' speeches accompanying the budgets invariably answer the question in the affirmative; practical experience of the last several years invariably answers the question in the negative. *The new budget will join several past budgets, with their absurd levels of taxation, to constitute a supreme ironic procession, with the laughter of the Goddess of Wealth in the background.*

The Union Budget 1973-74

"Like leaves in Vallombrosa,
Like Virgins in Virginia,
Like monks on Monte Rosa,.
Like chiefs in Abyssinia,
Like banditry in China,
Like Turkomen in Khiva,
Like herring in Loch Fyne are
Committees in Geneva."

Every budget speech is strewn with laudable objectives as thickly as autumnal leaves in Vallombrosa, and the number of times the resolute decision to combat inflation is repeated is as countless as committees in Geneva. India is the fabled land of contrasts, but there is no disparity so glaring and costly as that between the prized ends solemnly pronounced in the budget speech every year and the provisions of the annual Finance Bill which are so admirably calculated to frustrate those objectives.

The best definition of "inflation" is the simplest: "When government spends more than it gets, and labour gets more than it gives, the empty feeling in your pocket is inflation."

Even the government's promise to exempt 20 per cent of the profits in backward areas for a period of ten years is not a promise on which one can rely. There have been numerous cases of breaches of similar assurances by the Central Government, the State Governments and municipalities. Citizens have found to their cost that public authorities in India have no compunction about repudiating their solemn promises given as incentives for investment and industrialization. Citizens who bought shares in the past on the basis of exemption from wealth-tax, have found the exemption suddenly withdrawn. Annuity policies purchased on the faith of existing law will now be disqualified for tax relief. Various State Governments which promised exemption from electricity duty for a period of years have broken their promises contained in legally binding agreements. Local municipalities, which

guaranteed exemption from octroi for a stipulated period, have gone back on their word.

Budgeting has become such a technically difficult job that it would be wise to adopt in India the refreshing recommendation of Sir Richard Clarke that there should be *no secrecy* about budget proposals.

The Union Budget 1974-75

Currencies fluctuate wildly; the stock market whirls up and down in a frenzy of its own; and most nations seem to be on the escalator of inflation, with their experts totally confounded by the seemingly insoluble crisis.

Professor Galbraith admitted openly at the Fourth European Management Symposium held recently in Davos that "economics as it is taught and practised, seems again to have lost touch with the problems it is meant to mitigate and solve". Professor Fritz Machlup of Princeton University, an eminent authority on pricing theory, confessed sadly that he had no formulae for solving the problem of inflation. Peter Bernstein, the famous consultant, said, "What we are asking ourselves is not 'what is your forecast?', but rather 'can we forecast?' ". Knowledge of such a world situation must engender sympathy for our Finance Minister and an understanding of the tremendous problems facing him.

The highlight of this year's budget is undoubtedly the reduction in the rates of personal taxation at all levels, the highest rate being brought down from 97.75 per cent to 77 per cent. The only two years since independence in 1947 when the rates of income-tax on individuals were so slashed, were 1957 when the highest rate was reduced to 77 per cent and 1965 when Mr. T. T. Krishnamachari dropped it to 74.75 per cent. The political atmosphere in the country is so little conducive to dispassionate economic thinking that the reduction in personal taxation, which merely represents a re-entry after nine years into the realm of rationality, must be regarded as evidence of great political courage. It is an act of faith on the part of the Finance Minister; and it is now up to the citizens to show by their response that the faith was justified. The change should result in less concealment of income and larger open investment in productive enterprises.

It is our public duty to justify the conviction of the Finance Minister that the loss of Rs. 60 crores involved in the reduction of the rates of personal taxation would be more than made up by more honest returns of income.

Unfortunately, the reduction in personal taxation is the only

streak of light, the only ray of mercy, that gilds the darkness of the night. The rest of the budget is as pedestrian in its outlook as its predecessors in our last eight years of stagnation. Some other countries have doubled in eight years their gross national product at constant prices!

The problem in India is not that of relative poverty but of absolute poverty. In the words of McNamara, absolute poverty is a condition of life so degraded by disease, illiteracy, malnutrition and squalor as to deny its victims basic human necessities, a condition of life so limited as to prevent realization of the potential of the genes with which one is born, a condition of life so appalling as to insult human dignity. Forty per cent of the Indian people live in such misery which no statistics can adequately describe.

The income *per capita* in real terms (*i.e.* after making allowance for the factor of inflation) rose at the annual average rate of 1.7 per cent during the 1950s; but in the 1960s the rate of growth dropped precipitously to 0.8 per cent. The painful truth is that, after 1970, there has actually been a drop in *per capita* income at constant prices. In real terms and at 1960-61 prices, the *per capita* income which was Rs. 348.6 in 1970-71 declined to Rs. 346 in 1971-72, and further declined to Rs. 333 in 1972-73. This means that the real income *per capita* was lower in 1972-73 than it was in 1964-65 for which the corresponding figure was Rs. 335.

When the West Bengal Government recently advertized 17 vacancies for poorly paid unattractive jobs in rural areas, the number of applications received from graduates and postgraduates was nearly one lakh. When the Haryana State Electricity Board invited applications for 300 assorted jobs, including 150 jobs of lower division clerks, nearly 60,000 candidates applied. The Electricity Board earned Rs. 60,000 as the price of application forms and a further sum of Rs. 4.5 lakhs as application fees! Some months ago a local bank at Moga, Punjab, received 4,000 applications for five posts of clerks, and among the applicants were a large number of postgraduates with first division; and the New Delhi Branch of the Bank of Baroda received about 1,25,000 applications for 2,000 posts.

Agricultural production has not been expanding as fast as the population. In quantitative terms, the common man today has less of foodgrains, edible oils and other necessities of life than he had a decade ago. It is well known that pulses are virtually the only source of protein for the common man in India; the consumption of this vital item of food in 1972 was 32 per cent below the figure of consumption (*per capita*) of 2.43 ozs. per day in 1961.

To expect the new budget to reverse these frightening trends is almost as reasonable as trimming a lawn with nail-scissors.

In countries like West Germany, Sweden, Japan, Canada and the U.S.A., finance ministers wisely reduced corporate taxation at the same time that they reduced taxes on individuals,—and their exchequers benefited largely from the resulting buoyancy. Our Finance Minister would have been well advised to reduce the rates of corporate taxation which are, by and large, higher than those in any progressive country.

The single gravest danger facing India today is that of inflation. While it took prices 65 years—1873 to 1938—to rise 32 per cent, in just four years from the end of 1969 to the beginning of 1974 wholesale prices rose 60 per cent, and food prices 62 per cent. During the same period the supply of paper money increased by 70 per cent; while the real output of the necessities of life increased by only 12 per cent. During 1973-74 wholesale prices shot up 29 per cent and money supply 17 per cent.

Inflation is the invisible tax which has never been passed by Parliament. It is not self-correcting but self-accelerating; it rises with compound vengeance. Of all economic phenomena, it is the most ruthless, relentless and remorseless.

As against our current inflation rate of 27-29 per cent the dangers of inflation even at the yearly rate of 15 per cent can be brought home by simple arithmetic. With 15 per cent inflation *per annum,* prices would double in five years, multiply sixteen times in twenty years, and multiply nearly 18,000 times in a normal life span of 70 years. At this rate of inflation, a

capital of Rs. 15,000 would only be worth 85 paise at the end of the life span.

J. M. Keynes said: "There is no subtler, nor surer, means of overturning the existing basis of society than to debauch the currency. The process engages all the hidden forces of economic law on the side of destruction, and does it in a manner which not one man in a million is able to diagnose".

Inflation devours democracy. It is the favourite food of that demon. No country which has suffered over 20 per cent inflation for long has ever survived as a democracy. In South Korea and the Philippines, which experienced inflation in the 10-20 per cent band for a few years between 1960 and 1972, freedom has been very largely eroded.

India has already entered the danger zone. The primary defect of the budget is that instead of acting as a nutrient, it will only continue the woeful tradition of being a parasite on the national economy. It cannot increase production; it will not stem the tide of inflation.

It is, however, but fair to add that the cost-pull and wage-push inflationary spiral cannot be brought under control by mere governmental policy alone. The imperative need is for the people to observe self-restraint and self-discipline and to put the national interest above group selfishness. Hence a demand by militant trade unions for higher wages without increased productivity can only serve to aggravate the problem. As J. M. Keynes observed, "A demand on the part of the trade unions for an increase in money rates of wages to compensate for every increase in the cost of living is futile, and greatly to the disadvantage of the working class. Like the dog in the fable, they lose the substance in gaping at the shadow. It is true that the better organized sections might benefit at the expense of other consumers. But except as an effort at group selfishness, as a means of hustling someone else out of the queue, it is a mug's game to play".

One of the more endearing characteristics of our Finance Ministers has been their readiness to make brave assertions which are taken by the credulous as factual but which are in reality delightfully fanciful. This year's budget is described

in the concluding paragraph of the budget speech as one more step in the direction of "a rapidly expanding economy with socialist objectives". In truth, the last eight years have been years of tragic stagnation and the socialist objectives remain as unfulfilled as the desire of the moth for the star.

The present exercise by the Planning Commission in the field of policy-making will also have to undergo a sea change. The fatuousness of its present efforts at formulating the policy can best be brought home by the fable which recently appeared in *The Financial Times* (London). Walking through the jungle, a lion spied a mouse sitting sadly by a bush; and he asked the mouse what was wrong. "I am so small," the mouse replied, "and all the other animals look down upon me". "Then", said the lion, "I can help you. Just stop being a mouse and be a lion instead". The mouse was very grateful. "I shall certainly do what you suggest," he said, "but how do I stop being a mouse?" "That," said the lion, as he walked imperiously away, "is for you to decide. I formulate the policy".

While formerly we used to suffer from social evils, we now suffer from the remedies for them. We are possessed by such a pathological obsession about our favourite and fatal make of socialism that we are prepared to let the nation sink deeper into the quagmire of misery rather than adopt pragmatic policies.

The Union Budget 1975-76

The objectives set out in the budget speech are indisputably sound. However, the road to economic ruin is paved with good budgetary intentions. Among the most popular lines in the English language are Goldsmith's:

> *"Ill fares the land, to hastening ills a prey,*
> *Where wealth accumulates, and men decay."*

How much worse fares the land like India where wealth does *not* accumulate and men decay!

The virtual sameness of the budget, while Finance Ministers come and go, shows that the shaping of the budget is the work of bureaucracy. There are some men of outstanding calibre in the Finance Ministry, but there is something in the culture of the North Block* which is aggressively conservative. It has been said that the civil service mandarins hate anything new. They fight like mad to remain the same and resist any suggestion for change with an energy that is directly proportional to the radicalness of the change proposed.

What we need today is the type of budget which would be introduced by a man of Dr. Ludwig Erhard's vision and courage. In June 1948 Erhard ended inflation by putting through the currency reform which he had urged in vain on the Occupation authorities for two years. Without consulting the Allied officials he issued a decree on a Sunday, ending rationing and price controls. He proclaimed, "The only rationing coupon is the Mark". He reduced the rates of income-tax drastically at all slabs. The Occupation authorities were furious and were frightened out of their wits as to the consequences of what they regarded as a monumental blunder. The U.S. General Clay said, "Herr Erhard, my advisers tell me that you have made a terrible mistake." "Do not listen to them, General," Erhard replied, "my advisers tell *me* the same."

Erhard's introduction of the free market and lower taxation increased industrial production beyond all expectations. In

* The building which houses the Finance Ministry of the Government of India, New Delhi.

1955 the *per capita* national income in the U.K. was 35 per cent higher than in Germany. Today the national income *per capita* in Germany is 48.5 per cent higher than in the U.K.

If India is to make any worthwhile progress, sound fiscal policies must be adopted in place of the pedestrian budgetary techniques. Aneurin Bevan, in his last speech in the House of Commons on November 3, 1959, said:

> "There is one important problem facing representative Parliamentary Government in the whole of the world where it exists. It is being asked to solve a problem which so far it has failed to solve: that is, how to reconcile Parliamentary popularity with sound economic planning. So far, nobody on either side of this House has succeeded, and it is a problem which has to be solved if we are to meet the challenge that comes to us from other parts of the world and if we are to grout and to buttress the institutions of Parliamentary Government in the affections of the population."

Like the budgets of several past years, this year's budget is again essentially a bullock cart budget. A bullock cart is an ancient and venerable vehicle, but not to be recommended for going places or reaching your destination expeditiously.

Brave words are used by various Ministries suggesting the launching of a massive assault on inflation, stagnation, poverty and unemployment. After identifying the enemy, our first care should be to measure the enemy's strength and employ appropriate weapons. The experience of other countries shows the utility of sophisticated modern instruments which have ensured economic victory against heavy odds. But our Finance Ministry still believes in fighting only with bows and arrows.

The rate of growth in industrial production was about 9 per cent in the Second and Third Plans, while it has been only around 3 per cent since 1966-67. In important items of industrial production we are behind even the Third Plan targets for 1965-66; in other words, we are two Plans behind.

Government spokesmen have emphatically asserted that the budget will not increase prices. Mr. Podsnap in *Our Mutual Friend* refused to see facts which were unpleasant and thought

he could push them behind him by a flourish of his hand. Politicians and bureaucrats deem a crisis not to exist until they say that it does.

The budget does nothing to mitigate the greatest injustice inherent in the scheme of income-tax, which is that the law adheres to certain monetary limits for various purposes, although the limits now operate, because of inflation, at ridiculously low levels. The apparent continuation of the old rates involves the imposition of an additional hidden tax by inflation. To ask a man to pay tax at the same rates at different slabs as he paid last year is in reality to ask him to pay higher rates, because the relevant slabs in real terms are lowered by the erosion in the value of currency.

The absence of a sense of justice and fairness in the budget is typical of our administration today. For instance, Rs. 250 crores accrue every year to provident funds which are maintained for the benefit of the poor and the middle-class who are the worst hit by inflation. But the provident funds are not permitted to earn the current high rates of interest; they are compelled to support government securities which give them an unrealistically low yield. In other countries the government assists the poor; in India the poor have to assist the government.

The budget displays unconcealed scorn for the judicial process. On several points, it proposes to annul with retrospective effect the law which had become well settled for years as a result of the rulings of the Supreme Court and the High Courts.

To take an example, the Supreme Court recently decided that higher excise duty was illegally levied on certain strips which were arbitrarily classified as "skelp". Government officials gave whimsical and fanciful definitions of skelp from time to time, and the illegal higher levy on skelp was sought to be supported by various criteria which were mutually contradictory and technically unsustainable. Yet the judgment is to be set at naught by a retrospective amendment which is to take effect from 1962.

Such retrospective provisions can only serve to bring the law into contempt. They imply that the citizen's right of appeal

is illusory, that the executive is omnipotent, and that the hapless citizen should never hope to win in his fight against the State, however illegal the State's action might be. Even the very cases in which the judgments were rendered by the Supreme Court and the High Courts have not been spared from the retrospective operation. Never in the history of India has any budget shown such total contempt for the rule of law.

The Government of India is the largest single creator of unproductive white-collar jobs in the world. It has turned a great nation into a clerical department of the administration. Every Finance Bill should have appended to it not only the Financial Memorandum showing the additional administrative expenditure entailed by the new levies, but should also show how many millions of man-hours will be unproductively used up as a result of the budget proposals.

One of the main reasons why our budgets are so unsatisfactory is the needless veil of secrecy about budgetary provisions, which prevents any public discussion of the issues involved. There should be less secrecy and more consultation, particularly consultation with the professionals. In Britain the government has started publishing Green Papers regarding all major innovations in taxation. In the U.S.A. the government invites public debate and discussion regarding various fiscal measures before the introduction of the budget. In Canada the rates of corporate taxation are announced in advance for several years. In 1972 Canada announced the rate of 50 per cent corporate tax and laid down in advance that the rate would be reduced by one per cent every year till it reaches 46 per cent in 1976, so that industries could plan five years ahead. India still follows the hugger-mugger budgetary practices which are at least half a century out of date.

The Union Budget 1976-77

It is in the fitness of things that the first epoch-making budget in the history of our republic should be published in March 1976 which is the bicentennial month of the first classic on modern economics—Adam Smith's *The Wealth of Nations.*

It constitutes a landmark, since for the first time a Finance Minister has accepted, adumbrated and applied three basic principles:

(*a*) Realistic rates of taxation are far better than confiscatory rates, from every point of view. "The majority of Indian taxpayers would prefer to abide by the law and pay taxes as due, provided the tax burden is reasonable." The budget constitutes a clean shift from fiscal theology to fiscal rationalism. In that sense it is our first *modern* budget.

(*b*) The goal of social welfare is unattainable without economic growth; and therefore, the accent has to be on *economic growth* with social justice.

(*c*) A dialogue with the interests affected is a desirable prelude to a growth-oriented budget.

When the rates of personal taxation were reduced for the financial year 1974-75 there was a substantially higher collection of income-tax than was budgeted for, despite complete stagnation in the economy. This year the rates of income-tax and wealth-tax have been lowered at all levels, the maximum marginal rate of income-tax being 66 per cent as compared to the maximum marginal rate of 74.75 per cent for the year 1965-66 which was uptil now the lowest in the history of our republic. We should never revert again to the twenty-year regime of expropriatory taxation.

Even the work of a great creative mind like Wordsworth was unequal in quality:

> *"Two voices are there: one is of the deep,*
> *And one of an old half-witted sheep;*
> *And Wordsworth, both are thine."*

The budget speaks with two voices—one of sweet reason in the field of personal taxation, and the other of severe rigidity in the field of corporate taxation.

The budget continues the tradition of the *incredible instability* of our fiscal laws. A stable fiscal policy is to a nation what a stable family life is to an individual. Development rebate which was withdrawn in 1974 was replaced by initial depreciation which will now be replaced by investment allowance. Instead, it would have been much better to revive development rebate on which the law has crystallized over a period of twenty years. The chronic instability is underlined by the rationalization of the tax structure being stated to be in the nature of an "experiment". The law is an experiment, as all life is an experiment; but experiments should not be so frequent, so short-sighted and so short-lived as to rob the law of that modicum of stability which is essential to its healthy growth. A budget should ensure stability of the substantive law for an optimum period of five years and a minimum period of three years.

The *time-consuming and energy-wasting complexity* of our fiscal laws continues to be the hallmark of the new amendments to the Income-tax Act proposed in this year's budget. Two hundred years ago the thirteen Colonies entered upon a War of Independence to vindicate the principle "No taxation without representation", and became the United States of America. Today the principle adhered to by the department is—No tax relief without litigation. The investment allowance which is introduced by the Finance Bill is set out in no less than seven pages. The layman can have no idea of the senseless waste of time and effort involved in coping with our tax laws. For instance, development rebate was introduced in 1955, one of the conditions for its allowance being the creation of a development rebate reserve in the assessee's accounts. Litigation went on and on, as regards the question—in which year should the development rebate reserve be created? It was only after 21 years that the revenue finally accepted the position—in January 1976—that the development rebate reserve may be created in the year in which the development rebate is actually allowed against adequate profits, and need not be created in the year in which the assets are installed but there are no profits to absorb the development rebate. The shareholders of The Associated Cement Companies Ltd.

(as of several other companies) have been waiting to get the fruits of the Tribunal's decision in favour of the Company regarding tax relief in respect of newly established undertakings, and about two decades have passed since the relevant assessment year in which the relief should have been given. The revenue refused to accept the Tribunal's decision and has taken the matter on a reference to the High Court—a procedure which involves a guaranteed delay of at least ten years.

The Union Budget 1977-78

Visionaries expect the Finance Minister to be the imaginative allocator of the nation's financial resources and the oracular orchestrator of the people's energies and enterprises, skills and disciplines. In practice, the Minister is buffeted by the cross-currents of political pressures and by an unimaginable volume of contradictory advice proferred from all sides.

Dr. Colin Clark observed that the welfare State has become a Father Christmas who comes round on Boxing Day "to collect the entire cost of the gifts he has handed out, together with a substantial commission for himself for having organized the distribution". In India we have the top-heavy bureaucracy of a welfare State without the welfare.

Prodigality in non-plan expenditure creeps onwards with a noiseless and stealthy step. The main problem facing the Finance Minister—and the entire nation—is that we have inherited a system which has an in-built unfailing mechanism for ensuring perpetually increasing expenditure, while the laws of economics rule out any such device on the revenue side. No budget can amend the laws of economics any more than it can the laws of dynamics.

The situation in which the Finance Minister found himself when presenting this year's budget is fairly close to that of Marshal Foch when he sent the historic despatch from the battle-field in the First World War: "My left wing is retreating. My soft centre is crumbling. The situation is excellent. I attack!"

Figures are concrete; while quality is an abstract concept. That is why debates rage in Parliament and in the press about the various quantitative allocations made in the budget, while it is generally forgotten that it is the quality of the Plan expenditure which is infinitely more important than the size of the amounts set apart for various items. The impact of the budget on the national economy does not depend so much on the allocations made as on the perspicacity with which the

expenditure is incurred and the trouble taken to bring the outlay to fruition. You can no more expect a nation to have economic strength and growth by mere budgetary allocations than you can expect a child to grow up cultured and healthy because his father has set apart amounts to be spent on his education and medical care.

Several misconceived criticisms, stemming from prejudice or ignorance, are bandied about, specially when any concession is sought to be given to the corporate sector. The facts speak for themselves.

(*i*) What we call "big" business is in truth really small in the context of the modern emphasis on economies of scale and technological methods of mass production. That is why Indian goods have to be subsidized by the government in order that they may be competitive in the world markets. One unit in Taiwan produces more polyester staple fibre in a month than all the four manufacturers in India produce in a whole year.

(*ii*) We are right in heeding Gandhiji's advice that "it is not mass production, it is only production by the masses that could do the trick". Having regard to the problem of unemployment in the country, we protect our labour force against what are regarded as the ravages of automation. But it is often overlooked that such a policy is bound to have its effect on the price of the end-product. A textile mill in Hong Kong producing 2 lakh metres of cloth per day would employ less than a thousand workers in the three shifts taken together, while a mill in India would need at least 5,000 workers to achieve the same production level.

(*iii*) Several industries already have their capacity "frozen" by the existing constraints. To take the oldest Indian industry, the textile mills produced 4,100 million metres of cloth in 1953-54, while in 1975-76 their production aggregated to no more than 3,961 million metres. In 1951-52 they had 79 per cent of the textile market; today it is 50 per cent as a result of the expansion of powerlooms and handlooms.

(*iv*) The government is the greatest beneficiary of the expansion of the corporate sector—way above the "capitalist" shareholder. For every Rs. 100 earned as profits by the corporate sector, the public exchequer gains Rs. 780 in the aggregate: Rs. 527 as excise, Rs. 135 as sales tax, Rs. 118 as corporation tax.

(*v*) Savings in private hands invariably fructify far better than public savings.

Bernard Shaw referred to the unprofitable exercise conducted at universities which consisted in demonstrating that human rights did not exist. Learned men would spend hours in showing to their own satisfaction that the whole idea was chimerical. Shaw added that, unhappily, people persisted in their obstinate belief that they did indeed possess certain fundamental rights. They were prepared to defend them, to demand them, even to resort to force if they did not obtain them.

A somewhat similar situation exists as regards penal rates of taxation. Ideologues and academics spend hours in convincing themselves that high rates of personal taxation are essential in a socialist economy. The people persist in their obstinate belief that the State is not entitled to take more than half of their income. They are prepared to resort to various devices, even at the risk of being prosecuted, to keep a fair share of their own earnings.

The tax on capital gains is for the first time sought to be put on a rational basis. Lord Shawcross described the tax on capital gains as the greatest fraud in the history of fiscal legislation. He called it a fraud because in times of inflation when a citizen sells his capital asset and gets in depreciated currency a higher amount than what he had paid for it, he is asked to pay tax on his so-called capital gains, while in real terms, if an allowance is made for the debasement of the currency, he may have actually made a loss.

Herbert Spencer said: "The more numerous public instrumentalities become, the more is there generated in citizens the notion that everything is to be done for them, and nothing by them. Every generation is made less familiar

with the attainment of desired ends by individual actions or private agencies; until, eventually, governmental agencies come to be thought of as the only available agencies." We, the people, have numerous agencies available to us for holding the price line.

The Union Budget 1980-81

Elections can change the governing faces; budgets can change the face of the state. But, in order to achieve that, the budget must transcend the orthodox limits of "safety" to which we have grown so accustomed over the last 30 years. Is the new budget a take-away budget or a give-away budget? The answer is that it is neither.

There are factors operating in India which are highly favourable to the Finance Ministry. India is the only country in the world where the government ordains that citizens shall borrow from government-owned banks at 19 per cent rate of interest, while the government itself borrows from the citizens at ridiculously low rates ranging from 6 to 7.5 per cent. Public deposits in the banks total Rs. 32,000 crores; and out of this amount 44 per cent is required by compulsion of law to be invested in government bonds and securities on which the interest paid is about half of what it should be in justice and equity. Millions of people whose life savings are in the form of balances to their credit in provident fund accounts—which are again required to be invested in government securities—have to put up with this poor rate of return. Indian savings are as high as 19 to 20 per cent of the national income, of which the bulk is appropriated by the government as extraordinarily cheap money.

Besides, while in other countries the government subsidizes industry, in India industry has to subsidize the government. For instance, the government is the biggest buyer of cement and its purchases are at a controlled price which is below the cost of production. The Indian producer is paid the mean price of Rs. 205 per tonne, while the government imports cement at two and a half times that price.

Truly, we Indians are a "low arousal" people. We endure injustice and unfairness with feudalistic servility and fatalistic resignation.

A tax system is a nation's definition of "social equity", and our tax laws have no notion of social equity as between the

urban and the rural sectors. While many eminent thinkers have been repeatedly highlighting for two decades the anomaly that income-tax is not levied on agricultural income, the budget now proposes to abolish the existing wealth-tax on agricultural property. One of the grounds for its abolition is that "the valuation of agricultural land has posed difficulties leading to complaints of harassment". If this argument is valid, most urban assets (barring cash and goods for which stock exchange and commodity exchange quotations are available) should be given the same compassionate and sensitive consideration!

The burden of taxation that we bear is far greater than what Sydney Smith wrote about in the *Edinburgh Review* in 1820:

> "The schoolboy whips his taxed top; the beardless youth manages his taxed horse, with a taxed bridle, on a taxed road; and the dying Englishman, pouring his medicine, which has paid 7 per cent, into a spoon that has paid 15 per cent, flings himself back upon his chintz bed, which has paid 22 per cent, and expires into the arms of an apothecary who has paid a licence fee of £100 for the privilege of putting him to death. His whole property is then immediately taxed from 2 per cent to 10 per cent. Besides the probate, large fees are demanded for burying him in the chancel. His virtues are handed down to posterity on taxed marble, and he will then be gathered to his fathers to be taxed no more."

The most reprehensible part of the budget is the set of provisions which seek to give retrospective operation to various amendments. Retrospective legislation is the bureaucrat's dream but the taxpayer's nightmare.

The shining beacon of fiscal arbitrariness is the retrospective effect from 1972 sought to be given to an amendment which seeks to exclude borrowed capital from the scope of s. 80-J of the Income-tax Act and which will affect lakhs of shareholders. That section grants relief to the extent of six per cent of the capital employed to newly established industrial undertakings. The expression "capital employed"—whether taken in its legal sense or its dictionary meaning or its popular or commercial sense—must include borrowed moneys. Parliament

could not possibly have intended to favour the affluent assessees who are able to employ their own capital and to discriminate against the indigent who have to borrow funds to finance their undertakings. The point is truly elementary and the attempts of the revenue to exclude borrowed moneys were emphatically negatived by the Calcutta, Madras and Allahabad High Courts. Bureaucratic obstinacy now seeks to triumph, by a retrospective amendment, over commonsense and well-settled law.

Two things strike me with trepidation and amazement—the precipitate and chronic tinkering with the law by the powers that be and the inexhaustible patience of the Indian public. The Income-tax Act 1961, which repealed the 1922 Act, was meant to put the income-tax law on a stable basis. But those who thought that the legislature's passion for mutability was satisfied have been rudely awakened. Uptil 1979 the 1961 Act has undergone, on a rough reckoning, 695 insertions, 737 substitutions and 205 deletions.

The Income-tax Rules are amended with the same total disregard for public convenience. Whole new sets of amendments to the Rules were promulgated seven times in 1976, nine times in 1977, again nine times in 1978, and eight times in 1979.

In these days of galloping inflation, the proposed additional depreciation in the first year, amounting to 50 per cent of the normal depreciation, can hardly afford any significant relief. It gives no relief from tax but only postpones the payment of some tax from the year of installation to the years immediately following. The Chokshi Committee had rightly recommended much more liberal rules for depreciation. In the U.K., the assessee has full freedom to claim depreciation for tax purposes in any year or years of his choice—he can claim even 100 per cent depreciation in the very first year. Even under the Labour Government with a strong socialist bent, British industry was allowed this liberal scheme of claiming depreciation.

Mr. William Miller, Chairman of the Federal Reserve Bank of the United States, has observed: "There are various ways

to stimulate investment, but you get the biggest bang for the buck with faster depreciation."

Many plants in our country are getting worn out, but the deterrent to replacement is that, over the last 12 years, the cost of capital equipment has risen four to seven times in almost every major industry. Instead of increasing the normal depreciation by 50 per cent in the first year, the Finance Minister might well consider adopting the recommendation of the Sachar Committee that companies should be required to set aside a percentage of their profits as a replacement reserve, which should be allowed as a deduction in computing the taxable income.

A nation which will not let its industry retain sufficient funds to provide for obsolescence will itself soon become obsolescent. As Jean Monnet observed, "We do not have a choice: there is no alternative to modernization except decadence".

The budget does not give any indication of the vaguest consciousness, on the part of the various Central Ministries, of the desperate need to ensure economy in public expenditure. When the late Mr. H. V. R. Iengar presided over my budget talk in Bombay a few years ago, he remarked that his experience of 40 years in government had convinced him that, generally, about 40 per cent of government expenditure went down the drain. This estimate is strikingly corroborated by the experience of a distinguished official in Britain. Mr. Leslie Chapman, an ex-civil servant, has published an interesting book with the appropriate title, *Your Disobedient Servant,* where he narrates the story of Whitehall's overspending. He shows that an immediate saving of about 30 per cent of the total maintenance expenditure and of 40 to 50 per cent of the directly employed labour could be made.

The reason why the Finance Minister has been induced to accept some grossly unfair changes is the infernal shroud of secrecy which envelops every budget—a point I have repeated over the years. We have inherited this tradition of outdated secrecy about the budget from Britain where also the system has been strongly attacked by eminent economists and political scientists including Peter Jay.

Mr. Patrick Lenkin, who has vast and first-hand experience of Finance Bills in the British Parliament, says:

> "The way in which we legislate our changes in our tax laws does this House and the system we operate little credit.... Let us not delude ourselves: when we think that we are doing rather well on some complicated Finance Bill Clause, plenty of people outside are completely convinced that we have missed many of the main points—and they are probably right.... We must have less secrecy and more consultation; but, above all, we must have an opportunity for Hon. Members to hear at first hand evidence from the real protagonists in much of this legislation—the revenue on the one side and the professions on the other—as to the issues and merits of the legislation which we are considering."

Sir Richard Clarke, who had 15 years' experience as a Treasury Official in the U.K. and who was the originating genius of nearly every important development in the British budgeting techniques during the last two decades, has spoken out about the abuse of budget secrecy:

> "The problems of long-term tax policy should surely be debated openly with the facts on the table.... In my opinion, all governments should have just the same duty to publish their long-term taxation policy as they now have to publish their expenditure policy.... Indeed, this obligation to publish taxation policy is really essential for the control of public expenditure. In order to get realistic expenditure decisions, governments must argue them, both within themselves and outside, against their taxation implications."

Realizing that democracy flourishes best on the principle of open government, more and more democracies are having an open public debate on budget proposals before introducing the appropriate Bill in the legislature. In the United States the budget is conveyed in a message by the President to the Congress, which comes well in advance of the date when the Bill is introduced in the Congress. In Finland, the Parliament and the people are already discussing in June 1980 the tentative budget proposals which are to be introduced in the Finnish Parliament in September.

Every budget contains a cartload of figures in black and white—but the stark figures represent the myriad lights and shades of India's life, the contrasting tones of poverty and wealth, and of bread so dear and flesh and blood so cheap, the deep tints of adventure and enterprise and man's ageless struggle for a brighter morn.

The Union Budget 1981-82

Four ingredients are to be found in any recipe for preparing a budget—psychology, politics, economics and strategy. The quality of the budget depends upon the quality of the ingredients and the proportion in which you mix them. This year's budget is psychologically perfect, politically clever, economically unsound, and strategically a costly failure.

Few people are conscious of the fact that the so-called income-tax relief is nothing but an inadequate adjustment against inflation.

(*a*) The exemption limit of Rs. 10,000 was fixed in 1977. It was raised to Rs. 12,000 in 1980 and is now to be raised to Rs. 15,000. But Rs. 10,000 of 1977 is already equivalent to Rs. 14,500 today, and will probably be equivalent to more than Rs. 15,000 in the first half of the next financial year the income of which is to benefit from the increased exemption limit.

(*b*) For salaried employees, the maximum standard deduction of Rs. 3,500 is proposed to be raised to Rs. 5,000. The limit of Rs. 3,500 was fixed in 1974, and that amount now equals Rs. 5,140.

(*c*) The exemption limit of Rs. 50,000 for estate duty is proposed to be increased to Rs. 1,50,000. The exemption of Rs. 50,000 was fixed in October 1953 and the equivalent of that amount today is Rs. 2,87,000.

In short, the reliefs do not keep pace with inflation. We are experiencing a "fiscal drag". We do not have the system—which prevails in Denmark, the Netherlands, Canada, Australia and other countries—of automatic indexing of exemption limits and other tax reliefs by reference to the rate of inflation.

It would need generosity, more than veracity, to characterize the budget as economically sound.

Public amnesia is the politician's best friend. It is commonly forgotten that corporate surcharge was introduced in December 1971 to pay for the Bangla Desh war. Ten years have passed since the end of the war, but the surcharge is unending.

The most unforgivable feature of the budget is the levy of 15 per cent customs duty on the import of newsprint. It is a tax on public information and public knowledge. Since the radio and television are virtually made to function as public relations departments of the government, the newspaper is the only medium available for the dissemination of news. The cost of paper and printing has already risen abnormally high, and the government has done nothing to make India self-sufficient in newsprint. Having regard to all the circumstances, the introduction of a customs duty on newsprint may well be regarded as an unconstitutional restriction on the fundamental right to freedom of speech and expression which has been judicially construed to include the right to public information.

From the viewpoint of the strategy of the war on poverty and unemployment, on inflation, the black market and foreign trade deficit, the budget must be treated as a failure.

There are only two ways of dealing with the problem of unemployment—to increase the number of jobs or to decrease the number of job-seekers. The budget has made no significant provision to achieve either. It is a measure of the effect of the suffocating controls on the enterprise of citizens that only half a million new jobs have been created in the organized private sector since 1971.

The black market will continue to blacken our national character. The true begetter of the black market is the government which nurtures it by heavy taxation, mindless controls on production and nonsensical price controls.

The Sixth Plan aims at nine to ten per cent annual increase in exports. The Tandon Committee recommended eleven per cent annual rise, and pointed out that even if this is achieved over a period of ten years, India will still have only one per cent of the world's export market at the end of the decade.

We complain about the increase in the price of oil but forget that India has resources sufficient to earn the foreign exchange required for importing oil. For instance, by exporting twelve tonnes of wheat we would earn sufficient foreign exchange to

import ten tonnes of oil. (The international price of wheat ranges from US $ 200 to 220 per tonne, while that of oil is US $ 245 to 280 per tonne.)

Six basic flaws

There are six basic flaws in our economic administration which are all reflected in the budget.

First, the budget fails to recognize that infrastructural inadequacy is the most serious problem facing the economy today, and should be dealt with on principles of "crisis management". What is proposed to be done is too little; and already it is very late. Coal, electricity, oil, steel, cement, roads, railways and ports—all of them suffer from woeful inadequacy. Today the annual coal production is 115 million tonnes, and electricity generation is 29,000 megawatts—substantially less than what we need. By the turn of the century we shall need 400 million tonnes of coal and 1,08,000 megawatts of electricity.

Secondly, we have yet to realize that fast growth of government and fast growth of the economy are totally incompatible with each other.

So long as India continues to be over-governed, it will continue to be under-developed. While the Economic Survey refers to the necessity of "an all-out effort at eliminating wasteful expenditure both under non-plan and plan heads", in the budget speech and in the budget proposals there is not a word about the need to restrain the monster of incremental governmental expenditure.

The administration is excessive in quantity and deficient in quality. It would be far better to have a total ban on fresh recruitment in the administration section of the Central and State Governments, and pay the officials a decent wage. In 1956 Professor Nicholas Kaldor in his Report on Indian Tax Reforms had observed, "I feel that there is too much of false and misguided economy in India". These words are truer today than ever before. With the exemption limit at Rs. 15,000, the overwhelming majority of Income-tax Officers will themselves not be income-tax payers!

We have the absurd situation of public money being spent to increase the menacing role of the public administration and to multiply the government-imposed barriers to investment, employment and production. It is most significant that the two areas where the growth has been the fastest have been agriculture and road transport, and these are the areas where governmental interference has been the least.

Thirdly, in this land of ancient and unhurried civilization we seem to have no sense of time and no sense of urgency. The budget will make the direct tax laws even more complex than they ever were before. We keep on having more and more laws, wholly oblivious of the fact that litigation arising from the new budget proposals and the other new laws will outlast the 20th century.

We are content to fill the unforgiving *year* with sixty seconds' worth of distance run.

Energy is the most important and most complex problem facing the country, but no less than 800 reports on the subject are gathering dust on the shelves of the appropriate Ministry. Meanwhile, files keep on moving horizontally and vertically.

Fourthly, there is no understanding of the necessity for stability in fiscal laws. Industries are made to shift, all too frequently, from the list of high priority industries to that of low priority industries — and vice versa — without forewarning or public discussion.

Between April 1980 and February 1981 no less than 88 changes were made in the Export Policy, and 54 changes in the Import Policy. The welter of maddening and nerve-racking changes in the law is mainly responsible for our exiguous share of the world's export market.

Fifthly, in this vast country comprising more than one-seventh of the human race, any effort is doomed to failure when it is characterized by a small heart and a narrow outlook. Small minds and large republics go ill together.

A sum of only Rs. 155 crores is earmarked for family planning. There is a desperate need to spend ten times this amount in a vigorous, imaginative drive to contain the

population explosion, although no one suggests that we should go back to the days of the Emergency when family planning was sought to be implemented by treating human beings as if they were dumb cattle.

A sum of Rs. 110 crores is earmarked for safe drinking water. If it is well spent, it is expected to benefit 36,000 villages. It is an unmitigated disgrace that 31 years after independence, only 97,000 villages out of 5,76,000 have safe drinking water.

Sixthly, during the last few years it is not merely money which has been eroded in India. Far more devastating has been the erosion of values and moral standards.

The Special Bearer Bonds Scheme virtually amounts to institutionalizing the black market. It is tragic that under the regime of a Finance Minister who is a man of unimpeachable integrity, the budget should derive a substantial part of its sustenance from Bearer Bonds.

The danger facing the country when the Union budget is based on Bearer Bonds economics, needs no underlining. Black market and corruption are patently dangerous, but the official and public acceptance of black market and corruption is positively lethal.

One more year wasted

An eminent historian recently wrote an essay entitled *An Enquiry Into the Persistent Unwisdom of Government,* where he tried to probe the reasons why man has made such a deplorable failure of government, more than of any other human activity. Current history affords no better illustration of this dismal truth than India.

Providence has granted Mrs. Gandhi a marvellous, exceptional opportunity to build a strong India by taking a U-turn in fiscal and other economic policies — an opportunity as rare as rain in Iquique. She has massive public support. She has an overwhelming majority in Parliament. The party is solidly, in fact supinely, behind her. More than three-fourths of the States are ruled by Congress-I ministries which are more docile towards the High Command than the Native States were in the days of Paramountcy of the British Crown.

Oh, the years we waste, and the tears we waste! The economy is poised for phenomenal growth. What a fantastic chance has been missed to present a Union budget (accompanied by appropriate changes in other fields of economic administration) which could have transformed the nation.

But apparently we are destined to log one more year in the chronicles of wasted time. Where there is no vision, the old adage may stand.

The Union Budget 1982-83

The budget leaves untouched the major and urgent economic problems of India. In point of approach and vision, it is the budget of a grocery store, not of a great nation on the march.

To a dehydrated nation, the budget offers water from an eye-dropper. The burden of corporate taxation remains unchanged. The heavy rates of personal tax remain unchanged, except at two slabs where they have been increased. The lowest rate of income-tax still remains as high as 33 per cent. Even in very prosperous countries it is much lower. In socialist Sweden the lowest rate is 1 per cent; in socialist France 5 per cent; in Canada 6 per cent; in the United States 12 per cent; and in West Germany 22 per cent.

Small reliefs like increasing the income-tax exemption from Rs. 3,000 to Rs. 4,000 in respect of dividends and bank interest, and increasing the exemption for wealth-tax from Rs. 1,50,000 to Rs. 1,65,000 in respect of shares and bank deposits, are wholly inadequate. The income-tax exemption of Rs. 3,000 fixed in 1974 is equivalent today to Rs. 4,850; and the wealth-tax exemption of Rs. 1,50,000 fixed in 1970 is equal to Rs. 4,15,000 today. The ceiling on deduction in respect of insurance premia and provident fund contributions is proposed to be increased from Rs. 30,000 to Rs. 40,000; but Rs. 30,000 of 1978 when that limit was fixed is equivalent to Rs. 46,000 today. Thus in real terms the taxpayer is worse off even after the proposed concessions than he was when the limits were fixed years ago.

The rupee today is only 1/25th of its value in 1939 and less than 1/6th of its value in 1950. So in cases where in real terms an assessee makes a capital loss, he will still continue to be unfairly assessed to tax on the basis that he has made capital gains, even after the relief proposed in the budget.

In 1980-81 the total investment in the public sector had reached Rs. 18,231 crores and the net profit before tax on this staggering capital investment was only 0.2 per cent;

while companies in the private sector, chosen at random by the Reserve Bank of India, showed a net profit before tax of approximately 10 per cent. It is clear beyond doubt that savings fructify in private hands far better than in the hands of the government. But we still cling to our outdated notions of socialism and propose to invest the sale proceeds of the Capital Investment Bonds in public sector enterprises.

The budget estimates the deficit for 1982-83 at Rs. 1,365 crores. It is the fourth consecutive budget to provide for a deficit on revenue account. In the earlier 20 years the budget used to show a surplus on revenue account, except during the time of the Bangla Desh war.

At a reasonable estimate, black money will continue to be generated at a rate approaching Rs. 40 crores per day. With excessive taxation and the multiplicity of insensate controls, the termites of black money will go on sapping simultaneously both our economy and our character.

Some economists have estimated the wealth of persons of Indian origin residing abroad to be of the order of Rs. 115,000 crores, *i.e.* more than three-fourths of India's annual gross national product. Much remains to be done to attract investments in India out of this enormous wealth, under such schemes as would benefit the existing industries and promote the growth of new ones.

In the Year of Productivity, the budget refuses to lubricate the engines of production.

The Finance Bill continues the old tradition of introducing experimental provisions some of which are truly whimsical and most of which will need amendment in a short time. Surely the time has come for Parliament to enact some new legislation—say, Prevention of Cruelty to Taxpayers Act—which should override all fiscal legislation.

No other country can boast of so cheap bureaucrats and so expensive a government as India. There is no suggestion in the entire budget of curbing governmental expenditure.

On the contrary, the total disbursements of the Central Government will reach the all-time high of Rs. 29,219 crores.

With a budget like this, pessimism would be realism. The imprisoned splendour of India's great economic potential will continue to remain imprisoned. This year's budget is merely one more step in the perpetuation of our age-old poverty.

The Union Budget 1983-84

The proximity of 1984 brings to mind the despairing words of George Orwell: "We have sunk to a depth at which restatement of the obvious is the first duty of intelligent men". Some obvious facts and figures may be restated without the need for apology.

The deficit on revenue account for the year 1983-84 is estimated to be Rs. 1,794 crores, even after taking credit for Rs. 615 crores which represents the Union's share of the new levies. This deficit of Rs. 1,794 crores is the highest ever on revenue account. It is reduced to Rs. 1,555 crores by taking the surplus of Rs. 239 crores on capital account to meet the current expenditure. In plain language, the nation is now reduced to living partly on its capital borrowings.

The budget imposes fresh levies in the amount of Rs. 716 crores. But if the pre-budget levies—aggregating to about Rs. 1,900 crores—are taken into account, the total increase in the burden on the nation would be of the order of Rs. 2,600 crores. By a curious perversion peculiar to our times, the maxi-levies are imposed earlier,—thus reducing the regular budget to a mini-budget.

The unemployment situation, which was difficult before, is now getting desperate and will one day undermine the very fabric of our society by making the law and order problem unmanageable. A measure of the magnitude of the problem is afforded by the fact that just to keep the number of the unemployed at its present level, we would need to create 35 million new jobs during the current Sixth Plan—an impossible dream. In 1980-81, which was the first year of the Sixth Plan, only half a million new jobs were created in the organized sector. Thus on a conservative estimate, unemployment is increasing at the rate of six million a year.

While it is true that the Wholesale Price Index has shown a rise of only 3 per cent during 1982-83, the All India Consumer Price Index has risen by 8 per cent; and in cities like Bombay the prices of rice, vegetables and some other essentials have increased by 25 per cent to 32 per cent.

The self-assuring tone of the official hand-outs indicates that the authorities are on vacation from reality. Officialdom has become a prisoner of its own myth.

For the past several years, the Indian economy has been neither totally well nor totally ill. Around the end of February it is customary for the Finance Minister to send a Get-Well-Soon card to the economy, expressing his concern and sympathy and stating his belief that the ailments afflicting the economy are more psychological and mental than real. The custom has been scrupulously followed this year.

Apart from some small concessions, the budget has little to commend it. It would not be unfair to describe it as a rudderless budget. It contains pronouncements but no philosophy. It deals with themes but not with policies. What was needed was a budget which would leave its mark on history. But we have been presented with a budget the effect of which will be as ephemeral as the scent on a pocket handkerchief.

It is difficult to justify several provisions of the budget on grounds of justice or reason. The sacred cows of ersatz ideology graze more plentifully at the North Block than in any other pasture.

The hydra-headed bureaucracy of India contains some exceptionally able individuals, but they too get swallowed up by the system. Lord Curzon referred to the Indian administrative service as the strongest bureaucratic machine in the free world—so strong that even powerful viceroys found it difficult to correct or control it. The bureaucracy is impervious to all suggestions which come from outside sources. Their utter self-complacency resembles that of Mussolini who said, "Often I would like to be wrong, but so far it has not happened".

Four forces in North Block

There are four basic forces in the universe: the electro-magnetic force which governs the interaction of electrically charged particles; the weak nuclear force which controls, for

instance, the burning by fusion of hydrogen in the sun; the strong nuclear force, or binding force, which is released when the atom is split; and gravitation which represents the interaction between objects because of their mass.

In the North Block, the four elemental forces are—instability, complexity, injustice bred by a total disregard of constitutional morality, and pettiness compounded by obscurantism. This year's budget offers some telling examples of the operation of these four forces.

Instability and complexity

Apart from changes in several other laws, no less than 62 amendments are sought to be made in the Income-tax Act, by the Finance Bill—which should be more appropriately called and debated as the Income-tax (Amendment) Bill, 1983.

Section 89A was inserted in the Income-tax Act only last year, to encourage exports. Vague and insubstantial, it was as soft as a souffle. Public criticism of the proposal had no effect, and it was finally enacted into law in the same unsatisfactory form in which it appeared in the Bill. It was to come into force from the assessment year 1983-84. But it never will, because it has now been repealed and replaced by the equally inadequate s. 80HHC with effect from 1983-84.

History will regard it as one of the cardinal errors of our generation that we mistook amendment for improvement and change for progress. The damage to the economy of our country and the welfare of our people, arising from the maddening instability of our laws, is truly incalculable. Look at the avalanche of new laws at the Union level. Between 1971 and 1982 the Centre amended the Constitution 22 times, passed 796 Acts, 161 Ordinances and 129 President's Acts for States which were under the President's rule. For good measure, during that period no less than 60,000 rules, orders and notifications were issued by the Central Government. In addition, the laws passed by the 22 States during the same years are legion.

In 1981-82, 68 changes and clarifications were announced in the law relating to imports, and 76 in the law relating to exports!

Contrast our infantile addiction to law-making with the position in a mature democracy like Britain where the number of statutes in force is deliberately reduced. As the Lord Chancellor, Lord Hailsham, pointed out last year, while there were 3,680 British statutes in force in 1964, the number came down to 3,109 in 1981.

This year's budget heaps complexity upon complexity and makes confusion worse confounded. It will give rise to a spate of litigation which will end its dreary course in the first quarter of the next century. Today the back-log of cases admitted and waiting to be heard in the Supreme Court and in the 18 High Courts is mind-boggling*.

Constitutional morality

When laws offend constitutional limitations, they can be invalidated by the Courts. But when they offend against the basic notions of justice and proceed upon a total disregard of constitutional morality, in many cases they can be rectified only by a strong, mobilized public opinion. There are several amendments proposed in the Finance Bill which have no truck with constitutional morality.

Nit-picking attitude

The new budget continues the hallowed tradition of a nit-picking attitude—major attention to insignificant trivia. It follows the unfailing ritual of annual variations in rates of tax. In a budget dealing with total receipts of more than Rs. 33,000 crores, the framers of the budget applied, what they are pleased to call their minds, to the deletion of reliefs which can be measured in coffee spoons. The Finance Bill repeals s. 80JJ which gave the princely deduction of Rs. 15,000 from the profits of livestock breeding, poultry and dairy farming, and s. 80JJA which gave the bewildering relief of Rs. 10,000 from the profits of the business of growing mushrooms.

India's falling share of world exports

The denial of weighted deduction under s. 35B in respect of export markets development expenses incurred after February 28, 1983, is a retrograde step which will hit Indian exports at

* For the figures of arrears of cases see p. 354.

the present time of world recession, when they need more succour from the government.

In 1955, the exports of India (US $1,280 million) were larger than those of South Korea (US $18 million), Hong Kong (US $444 million), Taiwan (US $123 million), Indonesia (US $945 million), and Singapore (US $1,101 million). In sharp contrast, in 1981 the exports of these far smaller countries were substantially higher than those of India: South Korea's exports were worth $21 billion, Hong Kong's $21.8 billion, Taiwan's $25 billion, Indonesia's $22.3 billion, Singapore's $21 billion, as compared to India's $7.3 billion.

India's share dropped from 2.2 per cent of world exports in 1950 to 1.05 per cent in 1960 and to 0.4 per cent in 1981. Among the exporting countries, India ranked 16th in 1950, 21st in 1960, 31st in 1970; and by 1981 its rank dropped to 46th!

Rural development

The proposed amendment of ss. 35CC and 35CCA which deal with rural development, amounts to unashamed politicization of an essential national service.

The cause of rural development is bound to suffer as a result of the change in the law, while the needs of rural areas continue to remain desperate. Dr. Gopalan, Director of the Nutrition Foundation of India, stated a few months ago that out of the 23 million children to be born in India in 1983, 20 million will be physically and mentally impaired as a result of malnutrition.

Penalty on dynamic companies

The two most indefensible provisions of the budget are the proposed amendment of ss. 35CC and 35CCA dealt with earlier, and the introduction of s. 80VVA which enacts that the 27 tax "incentives" enumerated in the section cannot be availed of by a company beyond 70 per cent of its pre-incentive profits. The companies hit by this new provision would probably number between 50 and 65 in the whole country. They are the most dynamic enterprises in our corporate sector. They undertake plans of development and expansion which result in capital formation, productive

investment, increased employment and larger revenues for the Union and the States by way of excise, sales tax, etc.

Economists seldom agree with one another. But there is a three-word maxim on which all economists are totally agreed, namely,—*investment produces employment.* Now it is proposed to penalize those very companies which make the maximum investment and contribute most to employment and capital formation. Such a taxing provision would be tantamount to an individual selling off his family silver to pay the grocer's bill. At the present time of recession, the new section virtually directs some of our best companies to walk slowly backward on a conveyor belt which is moving slowly forward. It constitutes an indulgence in arbitrariness well beyond the limits of justice and reason.

In other countries, such dynamic and vigorous companies are put on the Roll of Honour as national benefactors. If we had more companies of this type our economic problems would be resolved much faster. But our fiscal administrators look with great disfavour upon such companies. A perceptive scientist observed that insects have their own viewpoint about human civilization; a man thinks that he amounts to a great deal, but to a flea or a mosquito a human being is merely something good to eat. The attitude of the Finance Ministry towards our finest corporations is not much different.

One of the so-called "incentives" disallowed to a company under the new provision is deduction of expenditure on scientific research. The Soviet Union spends 4.4 per cent of its gross domestic product on research and development, the U.S.A. and West Germany 2.2 per cent, the U.K. and Japan 2 per cent, while in the case of India it is 0.6 per cent. We boast of the fact that we have the third largest number (2.5 million) of qualified scientists and technologists in the world, but in scientific productivity, research products, innovations, discoveries and break-throughs, we rank between 10th and 18th. Expenditure on scientific research deserves greater support, instead of the disallowance now proposed.

The Misery Index

The budget is calculated to underwrite stagnation. It will not prove to be the production engineer of economic growth.

It will have no effect on the Misery Index, *i.e.* the index comprising inflation, poverty and unemployment. The repeated official reference to the abolition of excise on pressure cookers is quite appropriate—the common man's goose has been properly cooked!

Finally, the ill-conceived changes and complications introduced by the Bill, which may be compendiously called "legal litter", are bound to affect further the poor quality of our tax administration. In the U.K. there are 29 million taxpayers, but the number of references filed in the High Courts is only around 30 in a year. In India there are only 4 million taxpayers, but the number of references filed in our High Courts is around 6,000 in a year, plus about 1,000 writ petitions. These figures reflect the tremendous public dissatisfaction and discontent with the quality of the law and of the fiscal administration.

When one takes into account what the budget could have accomplished and what its proposals in substance amount to. one is inclined to echo the last words of Cecil Rhodes. "So little done; so much to do".

PART III

Constitutional Issues

9

ATTACKS ON THE CONSTITUTION DURING THE EMERGENCY

Propositions filed in the Supreme Court against the Government's plea that Kesavananda's case should be overruled

History may look upon Kesavananda Bharati's *case as the greatest contribution of the republic of India to constitutional jurisprudence.*

The Emergency was declared on June 26, 1975. On November 10, 1975, a Bench of 13 Judges of the Supreme Court assembled to hear the plea of the Government of India that that decision should be overruled. On behalf of the citizen, the following propositions were filed in opposition to that plea. The Censor would not allow them to be published in any newspaper. However, after arguments extending over two days the Bench was dissolved, and the attempt to confer on Parliament an unlimited power of amending the Constitution happily failed.

At the outset it is important to note the true effect of *Kesavananda's* case*. In that case it has been expressly held that the right to property is not a part of the basic structure of the Constitution and therefore any amendment can be made to the Constitution in total disregard of the right to property. The only restriction on the amending power is that the power cannot be used to alter or destroy the basic structure or framework of the Constitution. In subsequent cases the Supreme Court can decide for itself whether a particular amendment alters or destroys the basic structure or framework of the Constitution. The rule of law, the right to personal liberty and freedom from arbitrary arrest and imprisonment, the right to dissent which implies freedom of speech and

* A.I.R. 1973 S.C. 1461.

expression and a free press are, it is submitted, a part of the basic structure of a free democracy, and it is these priceless human freedoms which cannot be destroyed by Parliament in exercise of its amending power. Thus *Kesavananda's* case ensures that tyranny and despotism shall not masquerade as constitutionalism. It is an astounding request from the Government that such a judgment should be overruled.

So far from there being a single compelling reason to reconsider *Kesavananda*, there are numerous cogent reasons why this Full Bench should not reconsider the judgment at all on merits.

(1) On behalf of the citizens three points were urged in *Kesavananda's* case:—

(*a*) *Golaknath's* case* was rightly decided and Parliament should be held not to have the power to abridge any fundamental right, having regard to art. 13 as it stood before the amendment. The 24th Amendment which made art. 13 subject to the provisions of art. 368 is invalid.

(*b*) The whole of art. 31C which abrogates for certain purposes the fundamental rights in arts. 14, 19 and 31 of the Constitution is invalid.

(*c*) In any event Parliament in exercise of its amending power cannot alter or destroy the basic structure or framework of the Constitution so as to make the Constitution lose its identity, and the latter part of art. 31C which excludes judicial scrutiny is invalid.

In *Kesavananda's* case the Supreme Court ruled against the first two submissions but accepted the third. A request by a citizen to reconsider the judgment would have been, it is submitted, rightly rejected; and the Government does not stand on any higher footing.

(2) According to well-established principles which govern the discretion of the Court in reconsidering its earlier rulings, as laid down in

(1955) 2 S.C.R. 603, 622-33
(1967) 2 S.C.R. 170, 176
(1974) 1 S.C.R. 1, 16

* A.I.R. 1967 S.C. 1643.

the Government's application for reconsidering *Kesavananda's* case must fail. (See also 94 L.Ed. 653, 670=339 U.S. 56, 86; 6 L.Ed. 2d 1081, 1102=367 U.S. 643, 677.) The criterion to be applied is that of "manifest error" and "baneful effect on the general interests of the public" resulting from the earlier decision. The concept of "manifest error" is well established by a long series of judgments both of this Hon'ble Court and of other courts. Manifest error is what can be demonstrated to be an error on the face of the record without argument—*e.g.* overlooking a statutory provision or a binding authority. It would be a patent fallacy to urge that because some learned judges hold a different view, the view dissented from is vitiated by manifest error. It is unarguable that the majority view in *Kesavananda's* case suffers from a manifest error. As regards the other condition of baneful effect on the general interests of the public, the happenings in the country since *Kesavananda's* case leave no doubt that whereas the ruling in that case is conducive to immeasurable public good, overruling of that judgment would have the most baneful effect on public interest, would prejudice the very survival of a free democracy and would threaten the integrity and unity of India.

(3) The election appeal of the Prime Minister was disposed of on November 7, 1975 and the relevant portion of the 39th Amendment was held invalid on the basis of *Kesavananda's* case. If Parliament's amending power is unlimited, the judgment in *Mrs. Gandhi's* case* would have been altogether different. This Hon'ble Court would be stultifying itself and would cause grave misgivings in the public mind about the stability and continuity of the law if immediately after holding the relevant part of the 39th Amendment invalid on the basis of *Kesavananda's* case it proceeds to hear arguments as to whether *Kesavananda's* case itself should be reconsidered. Judicial propriety cannot favour the highest Court striking down a significant constitutional amendment on the ground that it went beyond the amending power and then proceeding to consider whether the amending power should be held to be limitless.

* A.I.R. 1975 S.C. 2299.

(4) During the period of 2½ years which has elapsed since *Kesavananda's* case, nothing has happened which would justify a reconsideration of that judgment, while many depressing and painful developments have taken place which would totally justify the view that public interest imperatively demands that this Hon'ble Court should not reconsider that judgment. Since April 1973 not less than 58 Acts have been put in the Ninth Schedule with a view to excluding scrutiny by the court with reference to fundamental rights. A constitutional amendment has been made which, in the case* referred to earlier, has been held by this Hon'ble Court to savour of despotism, to involve negation of the rule of law and to militate against the essence of a free democracy.

Another amendment called "The Constitution (Forty-first Amendment) Bill" has already been passed by the Rajya Sabha in August 1975. That Bill represents the ultimate in contempt for the rule of law. It provides in substance the following:—

(*a*) No civil proceedings will lie against the President or the Prime Minister or the Governor of a State during his term of office in respect of any act done by him in his personal capacity whether before or after he entered upon the office. In other words, these dignitaries are placed above the civil law during their term of office in respect of their personal acts done before or after assuming office. A man may incur heavy debts or commit torts involving grave damage to fellow citizens but he has total immunity from civil proceedings during his tenure of office although the office has nothing to do with the debts or the torts.

(*b*) Lifelong immunity is granted to the same three categories of dignitaries in respect of any and every crime committed before assuming office or during the term of office. A man may commit the foulest of crimes, not excluding murders of his political opponents, but if after such a criminal record he has sufficient political support to become the President or the Prime Minister or a Governor of a State, for any period of time however brief, he gets total immunity for the rest of his life from

* *Mrs. Indira Gandhi* v *Raj Narain* A.I.R. 1975 S.C. 2299.

all criminal proceedings whatsoever. Pending criminal proceedings for any crime cannot be continued after he assumes one of the three offices. Since Governorship is entirely within the patronage of the executive, lifelong immunity from criminal liability can be conferred on any individual, at a day's notice, by the party in power. This shocking piece of legislation has no parallel in civilized jurisprudence. It throws India back to the days of despotic feudalism and of tyrannical Rulers of Indian States who put themselves above the law. If *Kesavananda's* case is overruled, the 41st Amendment Bill would represent a valid exercise of the amending power.

(5) *Kesavananda's* case was heard by the largest Bench ever constituted up to the last month; it took the longest time—5 months—which any case ever occupied in this Court; and the vastest materials ever brought together in a single case formed the record. No justification whatsoever exists for reconsidering a ruling which has been arrived at after the fullest and the most detailed consideration.

(6) The present time is the most inopportune for reconsidering *Kesavananda's* case. Quite obviously, the framers of the Constitution intended that unwise amendments to the Constitution should be checked by opposition within and without Parliament, and the fundamental rights secured such opposition. But today the fundamental rights stand abrogated. There is no effective opposition within Parliament, because the most important leaders of the opposition parties are languishing in jail indefinitely without a trial. The same sad fate has overtaken members of the ruling party who had the courage of their convictions and dared to differ. There is no opposition outside Parliament at all, since the right to dissent no longer exists. No one can write or speak anything in public which is not acceptable to the government. Anyone can be put in jail without a trial and the barbarous law goes to the absurd extent of expressly enacting that, apart from the total suspension of the fundamental right to liberty in the Constitution, no citizen can plead a right to liberty based on common law, natural law or rules of natural justice. The law further enacts in effect

that a government official may not be *permitted*, leave aside compelled, to disclose even to the court of law the grounds for indefinite detention without trial. Even judgments and reports of judicial proceedings, including the proceedings in this very case, cannot be published, however accurate they may be, except in a form which is acceptable to the Censor. This constitutes gross contempt of court by the executive. Likewise, proceedings within Parliament or the State legislatures cannot be published, however truthful the account may be, except in a form which finds favour with the Censor. Such total denial of the right to personal liberty and freedom of speech would make it impossible for the people to oppose, or arouse public opinion against, any amendment of the Constitution. No judicial conscience can permit reconsideration of *Kesavananda's* case with a view to affirming the principle of unlimited amending power at a time of such despotism when the people are totally denied the right to discuss the pros and cons of any amendment.

(7) If the present Full Bench decides to reconsider *Kesavananda's* case it would set an undesirable precedent and would have a pernicious effect on the continuity of the law. Following the precedent set by this Full Bench, another Full Bench may be convened, at an equally short interval, to reconsider the judgment of this Full Bench. The process can be unending. Judicial propriety requires that no such precedent should be set, particularly in a matter where the very future of freedom and of the rule of law and the very survival of the unity and integrity of India are at stake.

(8) The question of reconsidering *Kesavananda's* case is premature at this stage. This Hon'ble Court has not yet applied its mind to the question whether the constitutional amendments which are challenged in the petitions listed before this Full Bench are invalid on the footing that the basic structure of the Constitution has been altered or destroyed. It may well be that this Hon'ble Court may have no difficulty in disposing of all the listed petitions without any reconsideration of *Kesavananda's* case.

(9) It is submitted that *Kesavananda's* case should not be reconsidered and the judgment should be allowed to stand.

But if at all it is to be reconsidered, in fairness to the citizens the question should be reframed so as to embrace those parts of the ruling in *Kesavananda's* case which were against the public. The question should deal generally with the entire ruling in *Kesavananda's* case so that citizens should be at liberty to argue that *Golaknath's* case was wrongly overruled and art. 31C should be struck down in its entirety. As the question is framed, it only permits the Government to attack that part of the ruling which they are aggrieved by but it leaves no scope to the citizens to argue about the rest of the ruling which has gone in favour of the Government. If this Full Bench is to give the same adequate consideration to the entire case as was given by the earlier Bench in *Kesavananda's* case, it is difficult to see how less time would be taken than was taken in the earlier case. To immobilize the highest Court in the country for five months and prevent it from dealing with other important matters would be definitely prejudicial to public interest without achieving any public good. At the same time it would be less than fair to the citizens to seek to overrule *Kesavananda's* case without hearing full arguments.

(10) Without going into the question whether a Bench of 13 learned Judges is competent, having regard to the past practice of this Hon'ble Court, to overrule a decision of an earlier Bench of 13 learned Judges, it is submitted that in a matter of such immeasurable importance the traditions of this Hon'ble Court require that a Bench which is no larger should not seek to reconsider the judgment.

Should we alter our Constitution?

At the end of 1975, some members of the ruling party formulated proposals for amending the Constitution and introducing a presidential system which would have converted India into an authoritarian state.

(*The Illustrated Weekly of India*, January 10, 1976)

Lord Macnaghten, one of the wisest and most learned of judges, observed towards the end of his life that he had given all his days to the study of the law and was satisfied that there was nothing in it.

You may or may not agree with the Irishman who said, "There is no such thing as a large whisky", but there can be no two opinions on the point that there is no such thing as a perfect law. Doubtless the law is imperfect, and it would be imperfect even if it were made by a committee of archangels.

The reason is that such is the infinite variety of situations in which justice is required to be done between citizen and citizen or between citizen and the State that situations are bound to arise in which justice begins only where the law ends. To expect a perfect system of justice based on rules of law is no more rational than to hope to balance soap bubbles on hat-pins.

Even in the days of foreign rule the courts enforced the principle that any action by the executive against the citizen would have to be supported by law and that a court of law could go into the cases of detention and other interference with personal liberty, *e.g.* the right of free speech and free press. We should continue this elementary principle of a free democracy when we are governing ourselves.

The importance of having an independent judiciary to whom citizens can go for redress against the excesses of the executive may be illustrated by two seasonable examples. Maharashtra is a comparatively well-regulated State and has an able, cultured and reasonable man as its Chief Minister. Yet there is an Order of the Police Commissioner in Greater Bombay which prevents any assembly of five or more persons without the

Police Commissioner's permission, irrespective of the question whether the meeting is public or private, irrespective of the place where it is intended to be held, and irrespective of the purpose of the meeting. The net result is that tea or dinner parties, social gatherings, funeral assemblies, college lectures, board meetings and countless other meetings of five or more persons inevitably constitute millions of breaches of the Order since its inception. On December 18, 1975, the Bombay High Court struck down the Order as invalid and *ultra vires*. Next, the unreasonableness of the executive mind is well exemplified by the argument urged on its behalf before the Bombay High Court in *Bhanudas Krishna Gawde's* case*:

> "In fact, (counsel) went so far as to suggest that if the Conditions of Detention Order contained a clause that detenus are not to be allowed to eat any food, it could not be challenged and the petitioner would have no remedy by way of a petition under art. 226 as long as the Presidential Order suspending the enforcement of the fundamental right under art. 21, of which the right to eat is a part, is in force. Emboldened by this proposition of (counsel), which we cannot help observing is a startling proposition, the learned Government Pleader interposed and said that even if the Conditions of Detention Order were to authorize that the detenu should be shot, such a clause could not be challenged during the subsistence of the Presidential Order."

A paper containing "Some Suggestions" for amending the Constitution has gained wide circulation and has been adversely commented upon. It is eminently in the public interest and in the Government's own interest that constitutional amendments should be the subject-matter of an open public debate and not of a whispering campaign. According to one journal, the paper "is understood to have the blessings of some of the Congress luminaries". I hope and trust this is not correct. The note contains proposals for the most far-reaching and disquieting changes in the basic structure of our Constitution.

The present Westminster system of government under which the chief executive of the country is the Prime Minister with

* 77 Bom. L.R. 599, 602-3.

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Article 13 of the Constitution, which declares laws to be void if they are inconsistent with the fundamental rights, is proposed (according to that paper) to be deleted and it is sought to be provided that "no law shall be called in question in any Court on the ground of legislative competence or any other ground". If there is a dispute as to the correct interpretation of any of the provisions of the Constitution, the interpretation given by Parliament by way of a resolution shall be final and conclusive and binding on everyone including the Supreme Court and the High Court.

Article 32 of the Constitution, which guarantees the right to move the Supreme Court for enforcement of the fundamental rights, is proposed to be wholly deleted.

The result of the proposed changes will be that the Supreme Court and the High Courts will become mere appendages to the administration; and basic human freedoms, including freedom of religion and the rights of all minorities—religious, cultural, linguistic or regional, will cease to exist as guaranteed rights and will be unenforceable in the Court.

Further, the powers of the States will no longer be secure. If Parliament passes a law in respect of a subject which is exclusively assigned to the States under the Constitution but if Parliament resolves that such a law is valid, the law would automatically become valid and no Court would have the power to declare it to be void. The Constitution can thus be totally silenced by a majority in Parliament.

In order to allay public fears it is eminently desirable that it should be publicly announced that these suggestions for amendment have not been sponsored by the Government.

An interesting case arose in the U.K. in early December 1975, which is very instructive on the necessity of clearing doubts in the public mind. A citizen challenged the administrative action of the Home Ministry relating to the revised licence fee for television sets. An eminent Q.C. who appeared for the Government said before the Court of Appeal, "If the Court interferes in this case, it would not be long before the powers of the Court would be called in question." The public and the press were greatly perturbed by the threat that the Court would

have its wings clipped. Within four days the counsel for the Government apologized and made the following statement to the Court:

> "May I first make plain beyond any doubt that neither the Home Secretary nor anyone in his department, nor indeed anyone at all, instructed me or suggested to me that I should threaten this Court in any way, or indicated to me, directly or indirectly, that if you were to find against the Home Office the powers of the Court might be curtailed."

That was a small affair involving a mere thoughtless statement by a counsel in Court. In our case, it is the entire structure of judicial powers and independence which is sought to be dismantled.

Constitutional developments in India are not a matter of concern to our people alone. We constitute more than one-seventh of the human race and our choice between the two roads that diverge in the wood will have an imponderable impact on the cause of democracy throughout the world.

Reshaping the Constitution

In 1976, the Swaran Singh Committee was appointed to recommend constitutional amendments and it submitted its report which proposed several deplorable changes in our fundamental law. Most of its proposals were incorporated in the Constitution (42nd Amendment) Act, 1976, which is dealt with on pp. 199 to 217.

(*The Illustrated Weekly of India*, July 4, 1976)

The Swaran Singh Committee's Report on "Constitutional Amendments" will in reality change the basic structure of our Constitution; and yet our monumental apathy and fatalism are such that the proposals are less discussed in public and private than the vagaries of the monsoon or the availability of onions.

But the landscape of human rights, bleak with recent amendments, will be dimmed to the point of invisibility by the recommendations of the Swaran Singh Committee, and the public mind must take the trouble to grasp their legal and practical implications, and form and voice its opinion on the vital issues. If the proposals get transformed into law, public indifference must take its due share of the blame. In your sunset years your children will be asking you, "Where were you when the proposal to take away freedoms was put to public debate?"

Our Constitution has an extraordinarily forceful and meaningful Preamble which reflects the pledge contained in the Objectives Resolution of 1946 to guarantee basic human rights:

> *"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:*
>
> *JUSTICE, social, economic and political;*
>
> *LIBERTY of thought, expression, belief, faith and worship;*
>
> *EQUALITY of status and of opportunity;*
>
> *and to promote among them all*
>
> *FRATERNITY assuring the dignity of the individual and the unity of the Nation;*

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

The Swaran Singh Committee suggests that in place of the expression "Sovereign Democratic Republic" we should substitute "Sovereign Democratic Secular Socialist Republic"; and that the words "and integrity" should be inserted after "unity". This proposal is singularly ill-conceived.

First, what follows, or is annexed to, the Preamble, is the Constitution. The Preamble is a part of the Constitution Statute, but it is not a part of the Constitution. Article 368 deals only with an amendment of "this Constitution" but not of the Constitution Statute. Therefore, the Preamble cannot be amended under art. 368. Moreover, the Preamble, from its very nature and content, is incapable of being amended. It refers to the most momentous event in India's history and sets out, as a matter of historical fact, what the people of India resolved in 1949 to do for their unfolding future. No parliament can amend or alter the historical past.

Secondly, the insertion of the word "Socialist" would, instead of clarifying the basic structure of the Constitution, merely make it dangerously ambiguous. A coin, which has passed through millions of hands, almost loses its identity and the impress on it can hardly be deciphered; and the same happens to words of political jargon which are mouthed by millions.

Solzhenitsyn said in a recent broadcast, "...there is that attractive-sounding formula, 'socialist democracy', which is about as meaningful as talking about 'boiling ice'; for it is precisely democracy that the dragon of socialism is about to devour. And, as democracy grows weaker and weaker, loses more and more ground in the two continents it partially covers, so the force of tyranny spreads throughout the globe."

After the fullest consideration, the Constituent Assembly had rejected the suggestion of some members to put the word "Socialist" in the Preamble.

Thirdly, the words "secular" and "integrity" can add nothing to the content of the Preamble. Anyone who has a sense of

rhythm and style would know that the beauty of the Preamble which is distinguished by economy of words, would be marred by the insertion of the three words, all of which are unnecessary and one of which is misleadingly equivocal. You may as well try to improve upon Shakespeare by changing "The rest is silence" into "The rest is complete, weird and baffling silence".

The most astounding proposal of the Swaran Singh Committee is that art. 368 should be amended to provide that "any amendment of the Constitution, passed in accordance with the requirements specified in that article, shall not be called in question in any Court".

The Committee also recommends that the present art. 31C should be so amended that any legislation which is intended by the government to be in pursuance of the directive principles of State policy should not be called in question on the ground that it violates any of the fundamental rights except the rights conferred upon minorities and backward classes.

The consequence under the Committee's proposal would be that the priceless human freedoms would virtually stand abrogated.

The conviction underlying the Constitution is that an honest and competent government should be able to achieve the directory ends by the permissible means. The Swaran Singh Committee seeks to subvert this constitutional scheme by providing that the end justifies the means—any means.

Another part of the proposals relates to curtailment of the powers of the Supreme Court to enforce fundamental rights under art. 32 and of the High Courts under art. 226 to issue writs, directions and orders. It will result in crassly disturbing the balance between the executive, the legislature and the judiciary, and the judiciary will be relegated to the background.

Finally, the indefensible proposal regarding the special majority by which a law can be struck down by the court as being unconstitutional. The Swaran Singh Committee proposes that as regards any case involving the question of the constitutional validity of a law, a Bench of at least seven judges must sit in the Supreme Court and of at least five judges in a

High Court, and that no law can be invalidated except by the decision of "not less than two-thirds of the number of judges constituting the Bench".

The proposal violates the rudiments of arithmetic. Neither two-thirds of 5 nor two-thirds of 7 is a whole number, and a fraction of a judge cannot vote for or against the validity of a law. Larger Benches are not practicable, except in the rarest of cases. Consequently, what the proposal really amounts to is that four-fifths of the normal High Court Bench and five-sevenths of the normal Supreme Court Bench alone can strike down a law.

In substance, it means that a law declared and held to be unconstitutional and invalid by a majority (of less than two-thirds) of the Supreme Court or the High Court would still be enforced by the executive against the citizens. This is patently destructive of one of the basic features of the Constitution and is violative of the rule of law.

Lord Acton, one of the most learned of historians, after a profound examination of historical processes, came to the central conclusion that within every democracy there is a conflict between abiding law and arbitrary power:

> "The fate of every democracy, of every government based on the sovereignty of the people, depends on the choice it makes between these opposite principles: absolute power on the one hand, and on the other the restraints of legality and the authority of tradition. It must stand or fall according to its choice, whether to give the supremacy to the law or to the will of the people; whether to constitute a moral association maintained by duty, or a physical one kept together by force."

We, the people of India, made our choice in 1949. Twenty-seven years later, we are invited to make the other choice.

The light of the Constitution

The Constitution (44th Amendment) Bill, 1976, was introduced in Parliament in October 1976 and in a few days was enacted as the Constitution (42nd Amendment) Act. It represented the most devastating attack upon the Constitution.

(*Indian Express*, October 22, 1976)

The Constitution (44th Amendment) Bill, 1976, is so wide-ranging in its scope that a critical examination of its provisions, combining adequacy with brevity, would fill a handsome volume. The limited purpose of this article is to point out the glaring inconsistency between two of the "fundamental duties" sought to be enjoined by the Bill on the one hand, and the other provisions of the Bill and the arguments marshalled in support of them on the other hand.

One of the fundamental duties is that every citizen of India (including two-thirds of the population who are still left illiterate) shall develop "the scientific temper" and "the spirit of inquiry". The scientific temper postulates the habit of thinking with clarity and using words with precision, and a calm and dispassionate consideration of every issue in conditions of normalcy. Thus, by definition, the scientific temper would necessarily rule out, in times of Emergency, changes in the basic structure of the Constitution as are sought to be made by the Bill (assuming that Parliament is at all competent to make such changes).

Any vote for or against any provision of the Bill, within or outside Parliament, should be according to the citizen's conscience regardless of party affiliations. In order that such a vote may be cast with the care and knowledge which the subject deserves, "the spirit of inquiry"—one of our fundamental duties—would imperatively indicate an intensive discussion for several months, and an equal opportunity—through the mass media of the radio, the television and the press—for differing points of view to ascertain and arouse public opinion. It cannot be suggested that the spirit of inquiry has been brought to

bear on the Amendment Bill. Such a spirit involved almost three years of totally free public debate and profound deliberations in which all political parties and all shades of expert opinion took part, before the founding fathers of the Constitution gave it the final shape.

The other fundamental duty of every citizen is "to cherish and follow the noble ideals which inspired our national struggle for freedom". One of the noblest ideals of the great visionaries and fighters for national freedom was to ensure for the country certain fundamental rights which would be inalienable, and to guarantee liberties for all citizens.

In the Constituent Assembly a number of architects of the Constitution talked of the fundamental human freedoms as permanent and inalienable.

Dr. B. R. Ambedkar said: "The Declaration of the Rights of Man... has become part and parcel of our mental make-up.... These principles have become the silent, immaculate premise of our outlook."

Dr. S. Radhakrishnan said: "We must safeguard the liberty of the human spirit against the encroachments of the State. While State regulation is necessary to improve economic conditions, it should not be done at the expense of the human spirit.... This declaration, which we make today, is of the nature of a pledge to our own people and a pact with the civilized world."

Pandit Jawaharlal Nehru said: "A fundamental right should be looked upon, not from the point of view of any particular difficulty of the moment, but as something that you want to make permanent in the Constitution."

A large number of similar passages can be quoted from the Constituent Assembly Debates to illustrate "the noble ideals which inspired our national struggle for freedom".

How can one reconcile the fundamental duty to "cherish and follow" the aforesaid "noble ideals" with the proposal in the Bill to take away the basic human freedoms enshrined in arts. 14, 19 and 31 of the Constitution, including the right to equality before the law, freedom of speech and freedom of the press, the right to form associations or unions and to move freely throughout the territory of India? There is no socio-economic policy for the welfare of the masses

which is in any way impeded by these human freedoms. (I am wholly in favour of removing the small remnant of the right to property from the chapter on fundamental rights so as to put an end to the perpetual and deliberate distortion of the issue of the basic human freedoms by snide references to the right to property.)

The Bill seeks to deny the protection of fundamental rights to any anti-national activities or anti-national associations, and permits unrestricted freedom to enact a law to provide for the prevention or prohibition of such activities and associations. It is but right that anti-national activities and associations should not be allowed to wreck the State under the shield of fundamental rights. The real question is—which authority should decide whether an activity or an association is anti-national? Under the Bill it can be left solely to the executive to make such a decision without a judicial adjudication of the issue involved. In a country where the check of a strong well-informed public opinion is absent, there would be all too natural a tendency to treat even honest criticism of the government's policy as anti-national.

In four respects at least, the Bill aims at altering or destroying the basic structure of the Constitution. *First,* it proposes to overthrow the supremacy of the Constitution and install Parliament (a creature of the Constitution) as the supreme authority to which the Constitution will be subservient. *Secondly,* the Bill seeks to enact that the eternal values enshrined as fundamental rights in the Constitution will no longer be justiciable or operate as brakes on legislative and executive action in most fields. *Thirdly,* the balance between the executive, the legislature and the judiciary will be rudely shaken, and the executive at the Centre will enormously gain in power at the expense of the other organs of the State, particularly the judiciary. *Fourthly,* the Bill envisages the enforcement of laws even after they are held unconstitutional by a majority of the Supreme Court or the High Court.

Every major constitutional change represents a mood. Today, the mood of the nation which has suffered the death

of its freedom is hardly conducive to a proper evaluation of the long-term, mind-boggling consequences of the proposed amendments. The Bill merely seeks to provide for the exigencies of the moment, forgetting that the Constitution is meant to endure through generations to come.

It is Diwali—the festival of lights. As the lamps glimmer in and outside millions of homes, inexorable Time will be ticking away the remaining few days before the light goes out of the Constitution.

10
FUNDAMENTAL RIGHTS
The priceless right to personal liberty

(Review of *The Law of Habeas Corpus* by Dr. R. J. Sharpe, *The Times of India*, March 20, 1977)

Interpreting the Emergency laws which are unprecedented in the annals of jurisprudence, and in the light of the suspension of the fundamental right to personal liberty guaranteed by the Constitution, a five-judge Bench of the Supreme Court held[1] by a majority in April 1976 that a detenu cannot ask for a writ of habeas corpus or any other order from the court even if he is able to show that his detention is illegal or mala fide or is not authorized by the very law under which he is sought to be detained. A few months later the Supreme Court held in other cases that even the conditions of detention, however inhuman, irrational or without the authority of law, cannot be redressed by the court.

At such a juncture in our country's history, *The Law of Habeas Corpus* by Dr. Sharpe, which presents a thorough and comprehensive account of the history and the law of habeas corpus must be regarded as of immeasurable significance to the lawyer and to the public-spirited citizen alike. The law as analyzed by Dr. Sharpe justifies the conclusion that the aforesaid judgments of our Supreme Court are patently erroneous and that the correct position has been expounded in the unanswerable dissent of Justice H. R. Khanna.

The situation prevailing in India today is that which prevailed, as the book shows, in Britain before the seventeenth century. The law of habeas corpus was evolved in that century to free the citizen from the issue of a warrant without a stated cause, from arrest without a legal warrant, from imprisonment without a trial, and from punishment without a conviction. Habeas corpus represents one of the greatest contributions of England to the cause of human freedoms.

[1] *A.D.M., Jabalpur* v *Shukla* A.I.R. 1976 S.C. 1207.

Dr. Sharpe traces the historical development of the writ of habeas corpus from the mediaeval age to the present day. The first landmark in the struggle to secure the priceless right to personal liberty came in 1628 when Charles I ordered Parliament to adjourn, and the obedient Speaker wanted to leave the chair. The members held the Speaker by sheer physical force to his chair, and passed the Petition of Right which demanded that no citizen should be detained without a cause being shown or without a charge which he might answer according to the law.

The battle had to be waged for many subsequent years. The State denied the right of the court to issue the writ during vacation. Persons were moved from jail to jail so that it was impossible to serve the proper jailer with the writ; they were taken to places beyond the court's jurisdiction; or, after being released by the court, they were thrown back into prison. These abuses were stopped by the Habeas Corpus Act, 1679. So fierce was the public resentment against denial of personal liberty that the Habeas Corpus Act, 1679, contained an extraordinary provision making the judges personally liable for punitive damages in the event of their unduly denying the writ in vacation.

It is a historical fact, not generally known, that this Habeas Corpus Act which marks the point at which the writ took its modern form would not have been passed but for what Prof. G. M. Trevelyan called "the best joke ever made in England". The Bill was only passed in the House of Lords because the tellers in jest counted a fat Lord as ten and failed to rectify their figures. It was the fat Lord's ten-fold vote which secured individual liberty for England!

Dr. Sharpe points out that over the last two centuries the unmistakable trend is to broaden the grounds for judicial review so as to include virtually all errors of law. The writ of habeas corpus has now come to be regarded as "the birthright of the people" and therefore the court has no discretion to refuse the writ where proper grounds are shown for granting it.

Dr. Sharpe's book is studded with numerous classic passages in which eminent judges have expounded the philosophy of habeas corpus.

Lord Atkin's memorable dissent in *Liversidge's* case[1] has now become the law of England:

> "In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law."

Even in times of emergency and under martial law, the right to habeas corpus cannot be suspended, according to Cockburn C. J.:

> "But it is said that, as the necessity of suppressing rebellion is what justifies the exercise of martial law, and as to this end, the example of immediate punishment is essential, the exhibition of martial law in its most summary and terrible form is indispensible... There are considerations more important even than the shortening of the temporary duration of an insurrection. Among them are the eternal and immutable principles of justice, principles which never can be violated without lasting detriment to the true interests and well-being of a civilized community."

In the *Eshugbayi Eleko's* case[2], Lord Atkin said:

> "In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a court of justice. And it is the tradition of British justice that judges should not shrink from deciding such issues in the face of the executive."

In the *Soblen* case[3], Lord Denning explained:

> "The court cannot compel the Home Secretary to disclose the materials on which he has acted, but if there is evidence

[1] 1942 A.C. 206.
[2] 1931 A.C. 662.
[3] [1963] 2 Q.B. 243.

on which it could be reasonably supposed that the Home Secretary was using the power of deportation for an ulterior purpose, then the court could call on the Home Secretary for an answer: and if he fails to give it, it can upset his order."

Dr. Sharpe points out how by the judicial process the law of habeas corpus has been moulded to meet new legal problems. It has been extended to cases where the prisoner contends that the conditions of imprisonment are improper and requires the jailor to justify the imposition of those conditions.

It is the fashion in totalitarian countries to commit dissident creative minds to a mental asylum on the ground that the person detained suffers from a psychiatric disorder. The writ of habeas corpus can be successfully invoked against such brutal incarcerations under mental health legislation.

The categories of cases in which habeas corpus can be granted are never closed. It has been issued even in cases where a citizen is ordered to keep within the limits of a particular district and is prohibited from travelling beyond those limits.

The Supreme Court's judgment in the Minerva Mills' case

(*Indian Express*, May 16 and 17, 1980)

I. Rekindling the light of the Constitution

The judgment of the Supreme Court in *Minerva Mills Ltd.* v *Union of India*[1] striking down ss. 4 and 55 of the Constitution (Forty-Second Amendment) Act, 1976, replenished the faith of those who understand the Supreme Court's role as the watchdog of the Constitution, while it predictably displeased the small minority who want the Supreme Court to be the poodle of the party in power.

The Constitution is a part of the great heritage of every Indian. Its founding fathers wanted to ensure that even while India remained poor in per capita income, it should be rich in individual freedom. This, however, is not acceptable to certain political parties.

The light went out of the Constitution when, in 1976, a few days after Diwali—the festival of lights—the Forty-Second Amendment was rushed through Parliament while most of the opposition leaders were incarcerated without a trial.

The light of the Constitution has been rekindled by the Supreme Court. It is of the utmost importance that the ordinary citizen should understand what was at stake and what has been salvaged for him by the Supreme Court's judgment.

It was held in *Kesavananda Bharati's* case (1973)[2] that while Parliament has the power under art. 368 to amend any part of the Constitution (including the chapter on fundamental rights), the power cannot be so exercised as to alter or destroy the basic structure or framework of the Constitution; and this ratio was reaffirmed and applied in *Mrs. Indira Gandhi's* case (1975)[3] in which a constitutional

[1] A.I.R. 1980 S.C. 1789.
[2] A.I.R. 1973 S.C. 1461.
[3] A.I.R. 1975 S.C. 2299.

amendment to make the Prime Minister's election to Parliament unassailable in a court of law was declared void.

The rationale of the Supreme Court's judgment in *Kesavananda Bharati's* case is simple and cogent. Parliament is only a creature of the Constitution. Periodically, the Lok Sabha* is dissolved, and members of the Rajya Sabha† retire, while the Constitution continues to reign supreme. If Parliament had the power to destroy the basic structure of the Constitution, it would cease to be a creature of the Constitution and become its master.

Article 368 which confers on Parliament the power to amend the Constitution cannot be read as expressing the death wish of the Constitution or as a provision for its legal suicide. In exercising its amending power, Parliament cannot arrogate to itself the role of the official liquidator of the Constitution.

The Constitution is not a jellyfish; it is a highly evolved organism. It has an identity and integrity of its own, the evocative Preamble being its identity card. It cannot be made to lose its identity in the process of amendment.

The crucial point is that the people of India are not associated with the amending process at all under art. 368. This factor is decisive in determining the ambit of the amending power. By contrast, in many countries no amendment of the Constitution can take place without the consent of the people determined by a referendum or by the summoning of a convention or otherwise.

As regards constitutional amendments, the will of Parliament is certainly not the will of the people. To equate Parliament with the people is to betray complete confusion of thought. In choosing their representatives the electorate take into account a vast number of factors which have nothing to do with constitutional amendments. This has been proved time and again in countries where the people's will is ascertained on a referendum held upon Parliament's proposal to alter the Constitution.

* The House of the People, the Lower House of the Parliament of India.

† The Upper House of the Parliament of India.

The Australian electorate have approved only five out of 32 changes in the Constitution proposed by their Parliament in the last 79 years. At the end of 1973 the Australian Parliament passed by an impressive majority two proposals for constitutional amendment, but both the proposals were rejected by equally impressive majorities by the people in every single State of Australia.

In countries where, upon the legislature proposing a constitutional amendment, the legislature is required to be dissolved and the representatives are compelled to seek re-election on the isolated issue of amendment, it has been found that the constitution is hardly amended half a dozen times in a hundred years.

The myth that Parliament's will is the people's will was exploded at the election held in March 1977. Did the Parliament which passed the Forty-Second Amendment and which also approved of the proclamation of Emergency, represent the will of the people? The people gave their resounding verdict in 1977 on those misguided representatives who claimed to be supreme over the Constitution and over basic human values.

It was with a view to superseding the aforesaid judgment in *Kesavananda Bharati's* case, and conferring absolute and unlimited amending power on Parliament, that s. 55 of the Forty-Second Amendment Act inserted cls. (4) and (5) in art. 368. The effect of those two clauses is clear:

(*a*) "There shall be no limitation whatever" on Parliament's amending power. In other words, Parliament is declared to have the power to alter or destroy the basic structure of the Constitution and to deprive the Constitution of its identity.

(*b*) The court's jurisdiction to consider the validity of any constitutional amendment is ousted and it is expressly provided that no amendment, whether made before the Forty-Second Amendment or thereafter, "shall be called in question in any court on any ground."

The Supreme Court had no choice but to strike down the above clauses as being invalid and *ultra vires* the amending power of Parliament. Irrefragable reasons in support of the Supreme Court's verdict would strike any rational mind:

(i) The donee of a limited power cannot, by the exercise of that very power, convert the limited power into an unlimited one.

An organ established by the Constitution and vested with a limited amending power cannot make its own power unlimited while purporting to exercise that very power. Parliament's power was limited by the barrier of non-amendability of the basic features or framework of the Constitution. It is an untenable proposition that in the exercise of that limited power, Parliament could demolish that barrier.

What Parliament purported to do by the Forty-Second Amendment was to effect a revolution in the constitutional law of India. It sought to overthrow the supremacy of the Constitution and to make itself supreme.

Revolution is the only word to denote the substitution of one supremacy for another. Parliament, which is merely a creature of the Constitution, wanted to make itself the master of the Constitution and arrogated to itself the right to demolish the basic structure of the Constitution and to substitute a new Constitution with a totally different identity. It is impossible to uphold an amendment which makes the instrument the master, and the master the instrument.

(ii) The limited amending power is itself a basic feature of the Constitution.

The limited amending power of Parliament which was limited to preserve and protect the basic structure of the Constitution is itself a fundamental feature of the Constitution. Since Parliament has no right to alter any fundamental feature, it has no right so to amend art. 368 as to destroy that basic feature by abrogating the fundamental limitation on the amending power.

In other words, the supremacy of the Constitution and the unaltered survival of its basic structure, are themselves fundamental features of the Constitution, and after the Supreme Court had laid down the law that Parliament had no competence to alter the fundamental features, for Parliament to declare that it has that competence is not merely an act of constitutional impertinence but an irrational exercise in futility.

(iii) Ouster of the court's jurisdiction destroys a basic feature.

Clause (4), which was inserted by the Forty-Second

Amendment in art. 368, seeks to enact that however patently outrageous a constitutional amendment may be, no court shall have the jurisdiction to pronounce upon its invalidity.

This provision is clearly *ultra vires* the amending power of Parliament because it destroys the balance of power between the legislature and the judiciary, which is one of the essential features of the Constitution, and seeks to deprive the citizens of the mode of redress which is guaranteed by art. 32 as regards cases in the Supreme Court relating to fundamental rights and which is implicit in the entire scheme of the Constitution.

There can be no clearer subversion of the Constitution than for Parliament to claim the right to destroy the framework of the Constitution and to say that no court of law shall pronounce upon the validity of such destruction.

In *Kesavananda Bharati's* case the second part of art. 31C and in *Mrs. Indira Gandhi's* case art. 329A(4) were struck down precisely because the exclusion of the court's scrutiny was in areas which affected the basic structure of the Constitution. Surely, the same fate had to overtake Parliament's last desperate all-out attempt to exclude the court's scrutiny in respect of all past and all future encroachments on the inviolability of the basic structure of the Constitution.

It is the function of the Supreme Court to erase ugly blots on the Constitution cast by a transient Parliament—and no constitutional amendment can effectively take away this function from that institution which is the final interpreter of the fundamental law.

There are countless examples of the truism that a country which forgets its history is doomed to repeat it. When we hear the glib claptrap that Parliament can be trusted to pass only such constitutional amendments and other laws as are for the good of the people, let us remind ourselves of the type of irresponsible constitutional amendments and savage laws which have been passed by our Parliament in the recent past.

Again, we must bear in mind that India enjoys the dubious distinction of being the only country in the world whose elected representatives put on the statute book (in 1975-76) laws which said that no citizen should be entitled to claim the right to

personal liberty on the ground of common law, natural law, or rules of natural justice; that no person who was imprisoned without a trial should be permitted to know the grounds for his detention and that no public servant should be permitted to disclose such grounds even to a court of law for the judge's own satisfaction; and that a man who was ordered to be set at liberty by a court could be re-arrested on the same grounds which the court had found to be unsustainable.

II. Structure of marble or of red bricks?

The basic structure of the Constitution is of marble. Article 31C, as amended by s. 4 of the Forty-Second Amendment Act, sought to substitute a framework of red bricks. The Supreme Court's judgment has cried a halt to the process of administering euthanasia to freedom.

Article 14 guarantees to every person "equality before the law" and "the equal protection of the laws." Article 19 enacts that "all citizens shall have the right—(*a*) to freedom of speech and expression; (*b*) to assemble peaceably and without arms; (*c*) to form associations or unions; (*d*) to move freely throughout the territory of India; (*e*) to reside and settle in any part of the territory of India; and .... (*g*) to practise any profession, or to carry on any occupation, trade or business."

While leaving untouched the validity of the substantive part of art. 31C as originally enacted, the Supreme Court in its judgment struck down s. 4 of the Forty-Second Amendment Act which in effect provided that all laws which have a nexus with any directive principle of state policy in Part IV of the Constitution could with impunity ride roughshod over the fundamental rights conferred by arts. 14 and 19.

The Supreme Court has held that to abrogate the fundamental rights while purporting to give effect to the directive principles is to destroy one of the essential features of the Constitution. Ignorance and arbitrariness, injustice and unfairness, would not be open to challenge on the touchstone of the invaluable human rights if the amended art. 31C were held to be valid.

A study of political science leaves no doubt that the philosophy underlying art. 31C is the very quintessence of authoritarianism. All progressive states, democratic as well as authoritarian, profess to act in accordance with the broad principles which are called directive principles of state policy in our Constitution. The basic difference between an authoritarian state and a free democracy is that the former subordinates human freedoms to directive principles of state policy, while the latter achieves the same objectives by methods which respect human freedoms.

The conviction underlying our Constitution is that citizens need protection against their own representatives, because men dazzled by the legitimacy of their ends seldom pause to consider the legitimacy of the means. Articles 14 and 19 enshrine human rights which are universally recognized as essential to a free society—they are almost identical with the provisions in the Universal Declaration of Human Rights which was adopted by the General Assembly of the United Nations on December 10, 1948 and to which India is a signatory.

The bogey of a conflict between fundamental rights and directive principles is wholly misconceived. While Part IV (directive principles) contains the directory ends of the state, Part III (fundamental rights) indicates the permissible means of giving effect to those ends.

There can be no conflict between the directory ends and the permissible means. The only conflict is between the Constitution and those who refuse to accept the discipline of the Constitution. The real question is not of social interest versus the individual's but whether in the name of social interest the basic human freedoms can be trampled under foot.

The three attributes of an authoritarian state are—denial of equality before the law, denial of freedom of speech and the right to dissent, and denial of various personal freedoms which are comprised in the omnibus word "liberty". The above three attributes of authoritarianism are patently visible in art. 31C which abrogates the fundamental rights conferred by arts. 14 and 19.

Consequences of holding art. 31C to be valid

In order to appreciate the importance of the Supreme Court's judgment for the survival of Indian democracy, it is necessary to

have a clear idea of the effect and implications of art. 31C and what its consequences would be if it were held to be valid.

(1) Article 31C makes the Constitution stand on its head. The fundamental rights which are enforceable are rendered unenforceable by art. 31C, while the directive principles which are unenforceable are virtually rendered enforceable against the citizen when they are pursued in violation of his fundamental rights.

(2) The contrary constitutional scheme of subordinating the fundamental rights to the directive principles, which the Constituent Assembly was specifically asked by B. N. Rau to accept and which it deliberately rejected, is revived.

(3) The creative balance between the fundamental rights and the directive principles is destroyed.

(4) The balance between the judiciary on the one hand, and the executive and the legislature on the other, is disturbed. The guarantee of enforcement of fundamental rights contained in art. 32(1) and (4) is rendered meaningless as regards arts. 14 and 19.

(5) Classification which has a reasonable relation to the subject-matter of legislation is not violative of the right to equality before the law under art. 14. As regards the rights in art. 19, reasonable restrictions in the public interest are expressly saved by cls. (2) to (6) of that article. Therefore, it must necessarily follow that the object and effect of art. 31C is to legalize such encroachments on the fundamental rights as are not reasonable or not in the public interest.

(6) The directive principles are so comprehensive that they operate at all levels and they cover all the significant fields of international policy, as well as of domestic policy, including social, economic, educational, legal and judicial. The position of supremacy accorded by art. 31C to the directive principles—with their practically unlimited range—destroys the fundamental rights which cease to be fundamental and even cease to be rights. Only their corpses remain embalmed in arts. 14 and 19.

To limit the scope of art. 31C to the directive principles is really to impose no limit at all, because the directive principles comprise the bulk, if not the whole, of constitutionally relevant legislative and governmental activity.

The absurd situation is that, whereas an amendment of a single fundamental right would require a majority of at least

two-thirds of the members of Parliament present and voting, a law falling within art. 31C which overrides and violates several fundamental rights can be passed by a simple majority.

Further, one of the essential features of the Constitution is that no State legislature can amend the fundamental rights or any other part of the Constitution. This essential feature is repudiated by art. 31C which empowers even State legislatures to pass laws which involve in substance a repeal of the fundamental rights. If art. 31C were held to be valid, fundamental rights may prevail in some States and not in others, depending on the complexion of the State Government.

(7) The four pillars of the Constitution, as shown by the Preamble, are—justice, liberty, equality and fraternity. Article 31C takes away a very substantial part of justice, the whole of liberty of thought and expression, the essence of equality and the heart of fraternity.

(8) The condition of India during the Emergency affords a telling indication of what happens when human rights are suspended. But art. 31C puts India in normal times in a worse position than during a state of emergency under arts. 358 and 359. The reason is that whereas under arts. 358 and 359 certain fundamental rights are merely suspended or their enforcement in a court of law is suspended, under art. 31C there is an almost total repeal of the rights.

(9) In sum, freedom and art. 31C cannot co-exist. The right to equality before the law is a basic principle of republicanism, while the right to freedom of speech and expression, which includes freedom of the press, is the very foundation of a free democracy. Both these rights are destroyed by art. 31C which authorizes a government-controlled press and even nationalization of newspapers.

Sections 23 and 24 of the Bombay Prohibition Act made it an offence to commend the use of any intoxicant and s. 75 of that Act made the offence punishable with imprisonment up to six months. Though in 1951 the Supreme Court had struck down this provision on the ground that it infringed freedom of expression under art. 19(1)(a), any criticism of the prohibition policy can now be effectively silenced under art. 31C since prohibition is a directive principle under art. 47.

Inalienable human rights

No student of history can fail to be struck by the facts that the fighters for national freedom and later the architects of the Constitution strove to provide inalienable human rights which would not be submitted to vote and which depended on the outcome of no elections; the country became a free democracy and was welded into one state for the first time in history; the necessity arose of creating a sense of security and safety in the minds of numerous religious, linguistic and regional minorities; and the fundamental rights represented the solemn balance of rights, and the fundamental conditions on which all parts of India accepted the Constitution.

It is inconceivable that after having provided the most complete and comprehensive guarantees of the basic human freedoms known to any constitution of the world, the Constitution-makers still intended that any Parliament could take away those fundamental rights.

A good example of how essential the fundamental rights are to securing "fraternity . . . and the unity and integrity* of the nation" (referred to in the Preamble) is afforded by the present happenings in Assam.

The rights of all citizens to move freely throughout the territory of India and to reside and settle in any part of the territory of India are expressly enshrined in art. 19. But if these rights can be violated with impunity where the law is intended to give effect to the directive principles, any State Government may well contend that the welfare of its own people and the State's obligation to find employment for them (which are among the directive principles) impose the regrettable necessity of asking "foreigners" who have come from other States of India to go back.

What is happening in Assam today can easily happen in several other States. In fact some time ago Meghalaya passed a Bill to the effect that Indian citizens coming from other States could not stay in Meghalaya without a permit for more than six months.

The fact that such State laws would require the assent of the President under art. 31C is hardly a safeguard. The

* The words "and integrity" were inserted by the 42nd Amendment Act. See p. 196.

President is bound to accept the advice of the Central Cabinet; and politicians are not known to be averse to making sacrifices of basic values at the altar of political expediency and political accommodation.

Thirty years ago the Supreme Court had quoted with approval the dictum: "A government which holds the life, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism." The momentous significance of the Supreme Court's recent judgment is that it will save our people from such despotism in the uncertain future.

11
PREMATURE DISSOLUTION OF PARLIAMENT

In August 1979, the President ordered the premature dissolution of the Lok Sabha *on the advice of a cabinet which had never faced Parliament for a single day. The dissolution was improper from the constitutional viewpoint. The issue involved is of enduring importance in the future working of our Constitution.*

(*The Times of India*, August 24, 1979)

The familiar last line in T. S. Eliot's *The Hollow Men* suggests that the world will end not with a bang but with a whimper. While the audio quality of that far-off event is somewhat speculative, there can be no doubt that the Parliament of India did end with a whimper this week. In 1977 it had earned the gratitude and respect of the entire nation, since it gave them a new birth of freedom after the holocaust of human rights during the Emergency. But then it went the way of all flesh. A glorious beginning but an ignominious end.

When Mr. Charan Singh's cabinet resigned last Monday, its advice to the President to dissolve the Lok Sabha* was not binding on the President. To say that the advice of that cabinet in favour of dissolution was binding on the President is to say that a cabinet which has never lived with Parliament has a right to demand its death. Surely there are less dangerous ways of mocking the Constitution.

The correct constitutional position is that upon the resignation of Mr. Charan Singh's cabinet, the President had the following four options.

(*i*) The President could have invited Mr. Jagjivan Ram to form a ministry in view of the fact that he was the leader of the opposition and of the largest single group within the Lok Sabha.

* The House of the People, the Lower House of the Parliament of India.

(*ii*) The President could have asked Mr. Jagjivan Ram to prove his majority on the floor of the House by getting himself elected as the leader of the House, and upon his being chosen as such leader he could have been invited to form his ministry.

(*iii*) The President could have sent to the Lok Sabha a thoughtful message—(we govern men by words, said Disraeli)—bringing home the critical nature of the situation and calling upon the House to elect its own leader. Any leader so chosen could then have been invited to form a ministry.

(*iv*) The President could decide to dissolve the Lok Sabha.

The President could not possibly have gone wrong if he had chosen one of the first three alternatives. He could not possibly go right when he summarily chose the fourth, without first adverting to any of the others.

Two arguments have been advanced in support of the President's action. First, it has been urged that the President did not believe that Mr. Jagjivan Ram could form a stable government. This plea cannot carry conviction. Since a stunningly large number of MPs have conclusively demonstrated that they have as much moral backbone as chocolate eclairs, the theoretical process of counting numbers became irrelevant and the only way in which Mr. Jagjivan Ram's claim could be proved true or false was by having it tested on the floor of the House. In any event it seems that Mr. Jagjivan Ram was first promised, and then denied, time to submit his list.

The second plea in favour of dissolution has been that the leaders of all political parties except the Janata party told the President that they were in favour of dissolution. It is difficult to imagine that the majority of MPs were anxious to have their own tenure cut in half and take the risk of losing their seats at the next election. It is public knowledge that a large number of members of different political parties were opposed to the views of their leaders who asked for dissolution. In any event, the life of a parliament cannot depend on the whims and fancies of its members. The prescribed period of five years can be cut short only after taking into account the great purposes of the Constitution and overriding national imperatives.

It has been wisely said that elections are the heartbeats of a democracy. If they happen too fast or too irregularly, democracy collapses. To put an end to Parliament merely because two ministries could not face a no-confidence or confidence motion, is no more rational than to cut off the head to cure a cold. Further, a country of which half the population lives below the minimum subsistence line can hardly afford the fantastic unproductive expenditure of premature national elections.

12

THE SUPREME COURT'S JUDGMENT IN THE JUDGES' CASE

(*Chimanlal Setalvad Memorial Lectures*, **The University of Bombay, January 20 and 21, 1982**)

An independent judiciary is the very heart of a republic. The foundation of a democracy, the source of its perennial vitality, the condition for its growth, and the hope for its welfare—all lie in that great institution, an independent judiciary.

Those who share the above sentiments must have been greatly disappointed by the majority judgment of the Supreme Court in what has come to be known as the Judges' Case*. One may well wonder whether it was worth hearing arguments at such length, looking into so many confidential State papers and laying down eloquently so many lofty general principles, if in the net result no relief was to be given to the petitioners and the direct consequence of the judgment was to be the strengthening of the hand of the executive which has been of late so heavy on the judiciary.

There were three main issues in the petitions before the Supreme Court—(1) whether the Law Minister's circular dated March 18, 1981, seeking the consent of Additional Judges to be appointed in other States was valid; (2) whether an Additional Judge could be dropped without giving him an extension, despite mounting arrears of work; and (3) in what circumstances could a High Court Judge be transferred to another High Court.

The four subsidiary issues which arose for consideration were—(1) the *locus standi* of the lawyers to maintain the petitions; (2) the claim of privilege put forth by the Central Government regarding documents pertaining to the

* *S. P. Gupta and others* v *President of India* A.I.R. 1982 S.C. 149.

non-extension or transfer of Judges; (3) the circumstances in which and the period for which Additional Judges could be appointed under art. 224; and (4) the question whether the views of the Chief Justice of India had primacy if his advice, regarding the appointment of a Judge, differed from that of the Chief Justice of a High Court or the Governor of a State.

It was for the first time in the judicial history of India that (*a*) an Additional Judge whose term was not extended, approached the Court for relief; (*b*) the claim of privilege for State papers regarding judicial appointments was negatived and disclosure was ordered; and (*c*) the Chief Justice of India filed an affidavit in a matter pending in the Supreme Court.

There were two propositions on which there was no controversy: the independence of the judiciary is a cardinal principle of our Constitution, and an Additional Judge of a High Court is not appointed on probation.

Each of the seven Judges delivered a separate judgment. All were agreed upon the *locus standi* of lawyers to present the petition, and on the historical fact that art. 224 which deals with the appointment of Additional Judges has been misused since 1956, when it was first introduced into the Constitution.

By a majority verdict, all the petitions were dismissed and no relief was given in any case.

The minority view—voiced by Gupta, Tulzapurkar and Pathak, JJ,—was that the Law Minister's circular seeking the consent of Additional Judges to be appointed in any other State was invalid; and that the non-extension of Additional Judge Kumar in the Delhi High Court was also invalid, with the result that the President of India should reconsider the question of his extension. However, these three Judges who were in a minority on the above points, formed the majority with Venkataramiah, J, in holding that Chief Justice K. B. N. Singh's transfer from the Patna to the Madras High Court was valid.

Unfortunately, some of the judgments are far too prolix,—1486 pages, half a million words. A judgment of the Supreme Court and a thesis for a Doctorate in Law are two different exercises. It would be difficult to name any other country the judgments of whose highest court are generally so verbose

as those of ours. Brevity might well be cultivated as a virtue in Supreme Court judgments—at least as a concession to the shortness of human life.

The Chief Justice of India was made a party to one of the petitions. This was clearly wrong. But if any petitioner made such a mistake, the Court should have ordered the name of the Chief Justice to be struck off from the list of respondents before the hearing commenced.

One error led to another. The Court passed an order regarding the filing of affidavits by the respondents in such terms as to suggest that the Court expected an affidavit to be filed by Chief Justice Chandrachud himself. That in its turn led to the crowning mistake of treating the Chief Justice of India as a litigant in the case.

Transfer of Chief Justice K. B. N. Singh

The transfer of Chief Justice K. B. N. Singh from the Patna High Court to the Madras High Court was made by the President of India under art. 222 which enables the President, after consultation with the Chief Justice of India, to transfer a Judge from one High Court to any other High Court. The Chief Justice of India filed an affidavit stating on oath that there had been a full and effective consultation between him and the President (the Government of India) in respect of the transfer of Chief Justice Singh. It is significant to note that the Law Minister, though a party to the proceedings, filed no affidavit.

The only question in that petition was whether the order transferring Chief Justice Singh was valid and constitutional. The contest was clearly between the petitioners who challenged the validity of the order and the Government of India ("the President") who had passed the order. By no rational test could the Chief Justice of India be regarded as "a litigant" or as having any interest in the outcome of the litigation. The decision to effect the transfer was entirely that of the Government—the party consulted can never become the deciding authority.

To expect the Chief Justice of India to be a litigant, to file an affidavit, to appear through counsel, or to prove by written documents what he had discussed with the

Government, is such a bizarre suggestion that it should have been rejected out of hand. Fortunately, there has been in the ultimate result no miscarriage of justice, since the majority took the view that the transfer of Chief Justice K. B. N. Singh was valid on the facts proved before the Court.

The record did not support the minority view that the transfer of Chief Justice Singh to the Madras High Court was invalid. In my opinion, the majority view upholding the transfer was clearly right, since the transfer had been effected in the public interest and without any oblique motive.

Locus standi

The unanimous judgment of the Supreme Court regarding *locus standi* of lawyers to agitate the issues was clearly right. In fact no other view was possible. It is well settled that any member of the public has a right to bring before the Court a "public interest" case, provided he has a sufficient interest in the proceedings and is not a wayfarer, interloper, officious intervener or busybody. Obviously, the cases before the Supreme Court fell in the category of "public interest" cases; and lawyers do have "sufficient interest" in judicial appointments.

The argument that such a liberal extension of the doctrine of *locus standi* would open up the floodgates of litigation was nailed by Prof. K. E. Scott in words which were approved by the Australian Law Reforms Commission: "The idle and whimsical plaintiff, a dilettante who litigates for a lark, is a spectre which haunts the legal literature, not the court room". As Krishna Iyer, J, in *Fertilizer Corporation Kamgar Union's* case* had observed, "If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the Court will not be ajar for him. But if he belongs to an organization which has special interest in the subject-matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered."

* A.I.R. 1981 S.C. 344.

Privilege for State documents

The Supreme Court's decision to reject the Government's claim of privilege and order *public* disclosure of the documents pertaining to the non-extension of Kumar, J, and the transfer of Chief Justice K. B. N. Singh, must be regarded as controversial. When the Supreme Court ordered the documents to be disclosed, it would have been better if the hearing had taken place in chambers or in camera, to prevent nationwide publicity which has only served to lower the image of the judiciary in the eyes of the common man. In any event, the order of disclosure should not serve as a precedent to be routinely followed hereafter. The Court should be extremely circumspect in ordering disclosure of documents pertaining to judicial appointments. Pathak, J, found that "it was not an easy decision for the Court to order disclosure", though on balance he concurred in the order while sounding a note of warning. He observed:

> "The rules now developed by this Court relating to the disclosure of documents need to be carefully applied. The balance between the conflicting claims of public interest represented by officialdom and the public interest flowing from the administration of justice often calls for a delicate assessment, into which perforce must enter considerations vital to the operations of Government on the one hand and the demands of adjudication on the other. The responsibility fixed on the Court is a serious one, and there is no need to warn that this power which now vests in the Court can have grave consequences if the content of its potential is not truly appreciated and realized by those who wield it. Whenever a Court breaks new ground, the development and recognition of new rights is often accompanied by the birth of problems surfacing also for the first time. New doctrines must be cautiously applied, and no Court can shirk its duty if it finds that the power has been rightly invoked".

Law Minister's circular letter

On May 24, 1949, Pandit Jawaharlal Nehru stated in the Constituent Assembly that our Judges should be "first-rate" men of "the highest integrity" who could "stand up against the executive government and whoever may come in their way".

But Jawaharlal Nehru's standards are no longer in vogue. Inconvenient Judges who stand up against the executive are sought to be transferred to other States for the ostensible purpose of furthering "national integration". In reality, the policy of transfer of Judges is calculated to accomplish disintegration of judicial independence rather than national integration.

Dealing with the case of Justice Sankalchand Sheth* who was transferred during the Emergency, Chandrachud, J, had observed: "There are numerous other ways of achieving national integration more effectively than by transferring High Court Judges from one High Court to another.... Considering the great inconvenience, hardship and possibly a slur which a transfer from one High Court to another involves, the better view would be to leave the Judges untouched and take other measures to achieve that purpose. If at all, on mature and objective appraisal of the situation, it is still felt that there should be a fair sprinkling in the High Court judiciary of persons belonging to other States, that object can be more easily and effectively attained by making appointments of outsiders initially."

On March 18, 1981, the then Law Minister issued a circular letter addressed to the Chief Ministers of different States in which he requested them (*a*) to obtain from all the Additional Judges of the High Court in the State their consent to be appointed as permanent Judges in any other High Court in the country, and (*b*) also to obtain similar consent from those persons who have been, or in the future are to be, proposed for appointment as Judges. The letter also carried a request to obtain from the Additional Judges and the proposed appointees names of three High Courts in the order of preference to which they would like to be appointed as Judges or permanent Judges as the case may be. It was added that the written consent and preferences of the Additional Judges and the proposed appointees should be sent to the Law Minister within a fortnight of the receipt of the letter.

The majority of the Supreme Court Judges held that the Law Minister's circular did not deal with transfer, because it

* A.I.R. 1977 S.C. 2328.

contemplated the reappointment of an Additional Judge to another State after his present tenure ended. No doubt, this is technically true. The Godfather, in the famous novel bearing that name, was speaking likewise the technical truth when, after getting his rival murdered by an assassin, he told his wife, "*I* did not kill him". In form, the Law Minister's circular letter did not deal with transfer. In substance, the Additional Judge was asked to consent to his transfer to another State by forgoing his legitimate expectation to be appointed for a further term or to be made a permanent Judge in the very High Court where he functioned.

The nationwide sharp reaction to the Law Minister's circular was perfectly natural, having regard to the far-from-creditable record of the ruling party:

- In April 1973 the supersession of Justices Shelat, Hegde and Grover and the appointment of Justice Ray as the Chief Justice.
- During the Emergency, the transfer of 16 Judges when the record showed that none of them was transferred for the so-called purpose of "national integration"; and the already prepared list of 40 other Judges who were to be transferred later.
- In January 1976 the refusal to extend the term of U. R. Lalit, the Additional Judge of the Bombay High Court, who had granted bail to some students during the Emergency; and in February 1976 the refusal to continue R. N. Aggarwal, the Additional Judge of the Delhi High Court, who had ordered Kuldip Nayar to be released from preventive detention.
- In January 1977 the supersession of Justice H. R. Khanna and the appointment of Justice Beg as the Chief Justice.
- In 1980 five High Courts had only acting Chief Justices who remained unconfirmed (Andhra Pradesh, Assam, Delhi, Jammu & Kashmir, and Rajasthan).
- The shocking new practice of appointment of Additional Judges for only a few months at a time.
- Leaving Additional Judges guessing till the last moment whether their term would be extended or not, with the result that some of them had to be re-sworn just a few hours or minutes before their term was due to expire.

- The circular letter was issued at a time when politicians in high positions had been indulging in a campaign of denigrating the higher judiciary, treating every court decision adverse to the Government as a deliberate and motivated attack on the executive. A Chief Minister of a prominent State had talked of the "Dictatorship of the Court", while a Cabinet Minister in the Central Government had bracketed the judiciary with the opposition parties.

The circular, no doubt, aggravated the atmosphere of fear psychosis among the Additional Judges.

Bhagwati, J, expressing the majority view upheld the circular on the ground that "it has no constitutional or legal sanction behind it" and that it is "a document without any legal force". If this reasoning is right, the Court must also uphold a circular letter which communicates to each Judge through the Chief Minister that "the Government of India thinks very highly of those 'value-packed' Judges who never rule against the Government, and will consider favourably their promotion to the Supreme Court". Practical knowledge of human affairs would leave no doubt that a circular letter from the Law Minister can undermine judicial independence most effectively, while ensuring that it has "no constitutional or legal sanction" behind it.

The minority view, voiced by Gupta, Tulzapurkar and Pathak, JJ, that the Law Minister's circular letter was invalid is, I think, clearly the right view. The circular letter was unconstitutional for three reasons.

First, against the backdrop of the historical facts detailed above, it was calculated to have a coercive effect on the minds of the sitting Additional Judges by implying a threat to them that if they did not furnish their consent to be shifted elsewhere they might not be continued nor made permanent.

Secondly, art. 222 of the Constitution provides that "The President may, after consultation with the Chief Justice of India, transfer a Judge from one High Court to any other High Court". Transfers on a wholesale basis which leave no scope for considering each particular case and which are based on the executive's one-sided policy are outside the purview of art. 222. Tulzapurkar, J, used the language of studied moderation

when he called the circular letter an attempt to circumvent the constitutional safeguards "by resorting to transfers of sitting Additional Judges under the garb of making fresh appointments on the expiry of their initial or extended term".

Thirdly, an official of the Law Ministry filed an affidavit which carried the clear implication that the refusal of an Additional Judge to give his consent to serve in another State would be a relevant but not a conclusive factor against him when the question arises of the extension of his term or his appointment as a permanent Judge. The affidavit said: "It is not, however, the intention of the letter that a permanent or further appointment will be denied to a Judge *only* on the ground that he had not given his consent.... By no stretch of construction or from the facts and circumstances existing can it be sought to be inferred that failure to give consent would *necessarily* involve an Additional Judge ceasing to be a Judge." Thus, invidious discrimination between Additional Judges who give their consent and those who do not was writ large on the face of the circular letter and that made the circular letter violative of art. 14. In this context it is necessary to remember that High Court Judges do not constitute a single all-India cadre.

The refusal of the majority of the Supreme Court to strike down the circular must be regarded as the high watermark of abdication of judicial power.

Additional Judges

Article 216 of the Constitution reads, "Every High Court shall consist of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint". This article implies a constitutional obligation on the President to ensure that the High Court is fully constituted. Incalculable injury to the cause of public justice would ensue if the High Court is insufficiently manned to cope with the normal workload. When the normal workload of most of the High Courts is increasing at an alarming rate, quite obviously the remedy lies in increasing the strength of permanent Judges. If there is increasing congestion of traffic, you do not blame the traffic but you widen the roads.

Article 224(1) of the Constitution makes it clear that Additional Judges can be appointed only when it is necessary

to increase the number of the Judges for the time being "by reason of any temporary increase in the business of a High Court or by reason of arrears of work therein", and the appointment has to be made for a period "not exceeding two years". It is unarguable that Additional Judges can be appointed to cope with permanent increase in the normal workload of the High Court. Yet, ever since the power of appointing Additional Judges was conferred upon the Government in 1956, that article has been blatantly misused and the constitutional scheme has been distorted. Almost every one has been appointed first as an Additional Judge and then confirmed as a permanent Judge.

On March 18, 1981 — the date of the circular letter — the aggregate sanctioned strength of permanent Judges of High Courts was 308, while the aggregate sanctioned strength of Additional Judges was 97. This means that the sanctioned strength of Additional Judges was almost one-third of that of permanent Judges. Surely, those Additional Judges ought to have been appointed as permanent Judges if the constitutional duty under art. 216 of manning the High Courts sufficiently had to be discharged.

The dereliction of the constitutional duty was compounded by the fact that appointments were not made even upto the sanctioned strengths of permanent and Additional Judges. On March 18, 1981, there were as many as 85 vacancies in the High Courts, and on September 30, 1981, there were 76.

Nothing could be better calculated to destroy the sanctity of the Constitution than the continuance of a practice which is dead against both the letter and the spirit of the Constitution. By any rational standard, the various High Courts are grossly undermanned.

It is a matter of great public regret that the Supreme Court did not issue a direction restraining the Government from appointing hereafter any Additional Judges, till at least the vacancies in the sanctioned strength of permanent Judges had been filled up. As Gupta, J, said: "The independence of the judiciary depends to a great extent on the security of tenure of the Judges. If the Judge's tenure is uncertain or precarious, it would be difficult for him to perform the duties of his office without fear or favour."

Justice Kumar's case

The Judges in a minority (Gupta, Tulzapurkar and Pathak, JJ) were right in holding that the case of Kumar, J, of the Delhi High Court required to be reconsidered by the President for an extension of his term. The majority rejected his plea on the wholly unwarranted assumption that there was a full and effective consultation with the Chief Justice of India, although the record of the case gave no support to the view that the grave allegations against Kumar, contained in the letter dated May 7, 1981, addressed by the Chief Justice of the Delhi High Court to the Law Minister, were ever disclosed to the Chief Justice of India.

However, I would like to comment on the position under art. 217 which requires that in matters of appointment of High Court Judges the President must have free and effective consultation with the Chief Justice of India, the Governor of the State, and the Chief Justice of the High Court. In dealing with Kumar's case where the advice of the Chief Justice of India was contrary to that of the Chief Justice of the Delhi High Court, Bhagwati, J, held that under art. 217 the opinion of all the three functionaries who are to be consulted stands on the same footing and the opinion of the Chief Justice of India has no primacy. Bhagwati, J's ruling is unacceptable because its logical consequence is to put no higher value on the opinion of the Chief Justice of India than on that of the Governor of the State. In my opinion, if the Government were to reject the advice of the Chief Justice of India *merely* on the ground that it has received contrary advice from the Chief Justice of the State or the Governor, it would not only be acting unrealistically and unwisely but it would be guilty of constitutional impropriety. In Pandit Jawaharlal Nehru's time cases arose where the advice of the Chief Justice of India differed from that of the other functionaries, and Nehru abided by the advice of the Chief Justice of India.

The President is not an umpire or arbiter with freedom to choose the advice which suits him. On a proper reading of the constitutional scheme, primacy should be accorded to the advice tendered by the Chief Justice of India when he has fully considered—while disagreeing with—the views of the other two high constitutional functionaries; although his advice may be rejected by the Government for other valid reasons.

Can erring Judges be transferred?

The transfer of Chief Justice K. B. N. Singh from Patna to Madras was clearly justified, as pointed out above, since the transfer had been effected *bona fide* in the public interest. But that case raises a point of great constitutional importance which needs precise formulation.

The Supreme Court ruled in the case of Justice Sankalchand Sheth that a Judge could be transferred without his consent; and the validity of such non-consensual transfers was reaffirmed in the latest case.

In *Sheth's* case Chandrachud, J, had rightly said: "Experience shows that there are cases, though fortunately they are few and far between, in which the exigencies of administration necessitate the transfer of a Judge from one High Court to another. The factious local atmosphere sometimes demands the drafting of a Judge or Chief Justice from another High Court and on the rarest occasions which can be counted on the fingers of a hand, it becomes necessary to withdraw a Judge from a circle of favourites and non-favourites."

But the syllogism which has now been accepted by the Supreme Court is that a Judge can be transferred in the public interest but not by way of punishment; and therefore, if a Judge deviates from high standards of judicial ethics, he cannot be transferred because that would be by way of punishment. The logical conclusion from this process of reasoning is that a guilty Judge cannot be transferred but an innocent Judge can be. If a Judge's relatives are able to earn high fees at the Bar because of his position on the Bench and it is done with the Judge's connivance, the Judge cannot be transferred; but if it is done without his connivance, he can be transferred. Acting on this principle, some of the Judges who upheld the transfer of Chief Justice Singh are at pains to point out that there was no allegation of any impropriety against Chief Justice Singh. While, on the facts, there is no doubt that there was no such allegation against Chief Justice Singh, I am here dealing with the constitutional question whether his transfer would have been invalid if there had been such an allegation supported by evidence.

I regard the view, which forges out of misconduct a shield against transfer, as wrong. The correct constitutional position may be summed up as follows:

(1) The dichotomy is not between transfers in the public interest and transfers by way of punishment. The dichotomy is really between transfers in the public interest and transfers for extraneous considerations. Seeking to punish a Judge is merely a species of the genus "extraneous considerations". If a Judge is transferred in the interest of purity of administration of justice, his transfer would be valid, irrespective of the question whether the Judge was consciously defiling the well-spring of justice or not.

(2) A non-consensual transfer can only be for overriding considerations of public interest and not for any extraneous consideration. Seeking to transfer a Judge because of his sturdy independence and for judgments against the executive, is not only an extraneous consideration but a vicious, disgraceful and *mala fide* exercise of constitutional power. Such an order of transfer would be set aside by the Court, not because it amounts to punishment of the Judge but because the order would be *mala fide* and for an oblique purpose.

(3) It is the object of the transfer and not the result or effect of the transfer which is the decisive factor. If the Judge suffers great inconvenience and feels punished, that would not vitiate the transfer if the *bona fide* object was public interest, and it would not convert it into a transfer by way of punishment. As Gupta, J, said, "An order of transfer even if made for administrative reasons and in public interest is likely to cause some injury to the Judge transferred, though that could not be a valid ground for holding that the transfer is by way of punishment. It is the reason behind the order of transfer that should determine the nature."

(4) The argument that an erring Judge should not be transferred but impeached in Parliament under art. 218, read with art. 124(4), suffers from three infirmities. *First*, there is no constitutional warrant for the assumption that a Judge liable to be impeached is a Judge not liable to be transferred, or that the liability to be impeached and the liability to be transferred are mutually exclusive. On the contrary, all notions of justice and commonsense

point to the opposite conclusion, *viz.* that conduct involving judicial impropriety should be no defence against transfer. *Secondly*, a Judge's impropriety may not amount to misbehaviour, whereas impeachment under arts. 218 and 124(4) can only be "on the ground of proved misbehaviour or incapacity". *Thirdly*, to invite politicians to use the weapon of impeachment of Judges is hardly desirable or far-sighted. Let us not forget that as many as 198 signatures of M.P.s were procured on a scandalous petition to the Speaker of the Lok Sabha* to impeach Justice J. C. Shah, only because he had passed a wholly justified order against a corrupt government servant. Fortunately, Mr. Dhillon, who was then the Speaker of the Lok Sabha, managed to convince the majority of the signatories of the irresponsibility of their act and the move for impeachment was dropped.

* The House of the People, the Lower House of the Parliament of India.

13

CONSTITUTIONAL CHANGES AND THE PRESIDENTIAL SYSTEM

Desirable changes in constitutional law

(Convocation Address, The University of Madras, September 28, 1979)

I regard it as a great honour to be asked to address the 122nd Convocation of this renowned seat of learning. I can say in all sincerity that there are few cities in the world where the average standard of intelligence is as high as it is in Madras.

The importance of India in world affairs is now more widely recognized than ever before. The Report submitted in August 1978 by the Committee on International Relations to the U. S. Congress mentions that India has "finally achieved the ascendancy that had long eluded it" and that India has emerged as "a significant economic and military power as well as the dominant power in the subcontinent". Professor Rostow of the University of Texas at Austin has expressed his conviction that the most important phenomenon of the post-war era is the survival of the Indian democracy. The English historian, E. P. Thompson, has said, "India is not *an* important, but perhaps *the* most important, country for the future of the world. All the convergent influences of the world run through this society: Hindu, Moslem, Christian, secular, Stalinist, liberal, Maoist, democratic socialist, Gandhian. There is not a thought that is being thought in the West or the East which is not active in some Indian mind. If that sub-continent should be rolled up into authoritarianism—if that varied intelligence and creativity should disappear into conformist darkness—then it would be one of the greatest defeats in the human record, sealing the defeat of a penumbra of other Asiatic

nations." These quotations give some idea of the momentous destiny which we are called upon to fulfil.

There is a cavernous gap between India's tremendous potential and the depressing reality. Our economic accomplishment has been woefully insufficient to eradicate poverty and to enable the underprivileged of this country to rise above their ageless squalor.

Our nation has paid heavily for its folly in leaving the governance of this country entirely to professional politicians for whom politics is merely bread and butter,—a means of livelihood, or worse, a means of personal enrichment. The tremendous problems facing this country can never be solved by professional politicians, few of whom are equipped for the task. If the corrupt and inefficient administration is to be toned up, it can only be done by ministers with integrity, ability and knowledge who are versed in the art of management. If poverty is to be banished, it can only be done by men of vision and practical understanding of the ways in which the wealth of nations is created. Our bureaucracy without purposeful leadership at the ministerial level operates only as a guarantee of societal inertia.

Arnold Toynbee believed that history bore constant witness to the truth of Meredith's dictum, "We are betrayed by what is false within." This profound observation affords the key to our present crisis. Do we deserve our sublime Constitution? Has not the apathy of citizens—particularly of the elite who have almost opted out of the democratic process—been responsible for the corruption, incompetence and inefficiency that we see all around us? Our crisis of character is nowhere more evident than in politics. The moral crisis, combined with the economic crisis, has resulted in a political crisis of unparalleled magnitude. At such a juncture, the question naturally arises whether the constitutional law of India needs to be amended with a view to improving the quality of government.

Our Constitution was framed by men of great vision and knowledge. In these days of people's soul-eroding disillusionment with politicians, some are apt to put the blame wrongly on the Constitution.

However, it is high time that, having regard to the lack of character and calibre in the overwhelming majority of our politicians, we should think of making some badly needed changes in our constitutional law.

The expression "constitutional law" comprises not only the Constitution but also other parliamentary laws which supplement the Constitution and are concerned with subjects that are constitutional in nature.

There are three ways of amending the constitutional law. The first is to change those parliamentary laws which qualify to be treated as constitutional law,—without amending the Constitution itself. The second is to amend the Constitution, without altering its basic structure, in accordance with art. 368 of the Constitution. The third way is to amend the Constitution so drastically that its basic structure is altered; and this can be done, having regard to the Supreme Court's judgment in *Kesavananda Bharati's* case*, only by setting up a new Constituent Assembly or by a referendum. The third way of amending the Constitution may be ruled out as being clearly inadvisable at the present juncture. When the dangerous divisive forces are so pronounced, this is hardly a time to call a Constituent Assembly or to call for a referendum for changing the basic structure of the Constitution. Convening a Constituent Assembly would be a step fraught with the greatest danger to the unity and integrity of India. Even a small country like Belgium took twelve years (1967-1978) to revise the fundamental laws of that state. Our problems are far more complex and more numerous than those of Belgium. We are, therefore, left with the first two alternatives.

There are four desirable changes in our fundamental laws which can be implemented *without amending the Constitution.*

First, no political party should be recognized by the Election Commissioner or by any other authority unless the party is willing to maintain audited accounts of all its receipts and expenditure. The greatest source of corruption in public life is the total immunity of political parties from accountability while the small baker, butcher and grocer are expected to keep

* A.I.R. 1973 S.C. 1461.

accounts. It is but fair and equitable that political parties should be disciplined by the same requirements of the law which apply to citizens at large. Such a change requires no constitutional amendment but can be effected merely by the addition of a section to the Representation of the People Act, 1951.

Secondly, it seems essential to introduce partial proportional representation in the Lok Sabha*. Half of the Lok Sabha candidates should be elected on the basis of proportional representation, which is the system in force in several countries including Germany. In order to prevent the mushrooming of political parties and splinter groups, it should be provided that the benefit of proportional representation would be available only to those political parties which secure a certain percentage, say, 5 per cent of the votes cast in a region. The advantage of proportional representation is that it would enable the voice of minorities, regional parties, and other significant segments of the public, to be heard in Parliament, and thus allay the feelings of frustration and discontent among them. Further, it would prevent a repetition of the 1971 mischief when the Congress party, which received only 43 per cent of the votes, obtained more than a two-thirds majority in Parliament and was thus enabled to deface the Constitution by passing the disgraceful Forty-Second Amendment Act.

Proportional representation in the Lok Sabha is permissible under art. 81 of the Constitution which only requires "direct election". Therefore, the desired change can be accomplished by amending the Representation of the People Act.

Thirdly, some minimum qualifications should be prescribed for those who seek election to Parliament. This, again, can be done without amending the Constitution. Article 84 already provides that the qualifications for a person who seeks to stand for election to the Lok Sabha are —(*a*) he must be a citizen of India, (*b*) he must be 25 years old, and (*c*) he must possess such qualifications as Parliament may, by law, prescribe. The first qualification is usually an accident of birth; and the second is inevitably the result of the inexorable passage of time. Up to now Parliament has prescribed only disqualifications. I advocate some positive qualifications for aspirants to a

* The House of the People, the Lower House of the Parliament of India.

parliamentary career. When at this Convocation you see degrees conferred upon engineers, doctors, surgeons, lawyers and other professionals, you cannot fail to be struck by the grim irony of the situation where the one job for which you need no training or qualification whatsoever is the job of legislating for and governing the largest democracy on earth. You need years of training to attend to a boiler or to mind a machine, to supervise a shop floor or to build a bridge, to argue a case in a law court or to operate upon a human body. But to steer the lives and destinies of more than 650 million of your fellow-men, you are not required to have any education or equipment at all!

The long day's task was done for the Constituent Assembly on November 26, 1949, when it formally adopted the Constitution. On that historic day Dr. Rajendra Prasad observed in the Constituent Assembly:

> "I would have liked to have some qualifications laid down for members of the Legislatures. It is anomalous that we should insist upon high qualifications for those who administer or help in administering the law, but none for those who make it except that they are elected. A law-giver requires intellectual equipment but, even more than that, the capacity to take a balanced view of things, to act independently and above all to be true to the fundamental values in life—in one word, to have character."

Fourthly, a salutary change can be made in our constitutional law, without amending the Constitution itself, to reduce to a minimum the detestable exhibitions of the toppling game which has been a craze among our frolicsome politicians for some time past. Legislative rules or other laws can be so amended as to provide that a vote of no-confidence against the Government would be inoperative unless the legislature passing the vote of no-confidence chooses at the same time the leader who is to take the place of the Prime Minister or the Chief Minister. Such a system prevails in Germany where a vote of no-confidence in the Chancellor has to take the form of a resolution choosing another person as the Chancellor.

Let us now come to those changes which would *require an amendment of the Constitution,* but would not affect its basic structure.

First, art. 75 requires that a Minister at the Centre should be, or become within six months, a member of Parliament. An amendment should provide that while the existing provision would apply to the majority of Ministers, a minority of Ministers may be selected by the Prime Minister from outside Parliament, who would not be required to get into Parliament at any time. Even the Ministers who are not members of Parliament would have the right to address, and would be responsible to, Parliament; and thus the principle of collective responsibility of the Cabinet to the legislature would not be impaired. In Japan, for example, which has a democratic constitution on the Westminster model as we have, the majority of the Ministers are selected from the Diet, but it is open to the Prime Minister to select a minority of the Ministers from outside. The advantage of such a system is that it enables the Prime Minister to have in his cabinet some of the best talent available in the country.

There is a second reform which can be adopted in the alternative, or in addition, to the one referred to in the preceding paragraph. When an M.P. is nominated to the Cabinet, he should be required to resign his seat in Parliament. There are several advantages in having such a law. The Minister would then be able to concentrate on the task of governing the country, and his energies would not be dissipated in politicking and in discharging his time-consuming duties as an M.P. In France a person has to resign from the legislature upon his appointment to the Cabinet, and this system has worked extremely well in that country. It is true that in France the presidential system prevails; but this particular feature is equally compatible with the Westminster model, because it does not derogate from the principle of the responsibility of the Council of Ministers to Parliament.

The third suggestion I should like to make is that art. 75 should be altered to provide that every one of the 22 States of India should be entitled to send two representatives to the Lok Sabha who would not be elected on the basis of adult franchise but would be elected by Universities and professional bodies, and a similar provision should be made to have one representative so elected from each major Union Territory. This way we would have about 50 M.Ps. who would represent

the professions and the faculties and would be able to improve the tone and standard of debate in Parliament. Conceivably, they may hold the balance of power among the warring political parties which are chronically engaged in contending for the plums of office.

The various amendments in the Constitution and other constitutional laws, which have been suggested above with reference to Parliament and the Government of India, can be introduced at the State level as well, to great public advantage.

At a time when some of the founding fathers of the U.S. Constitution were still alive, Joseph Story made a profound observation which is very apposite to our own situation when we are fortunate enough to have still in our midst some of the architects of our Constitution:

> "It depends upon the present age, whether the national constitution shall descend to our children in its masculine majesty, to protect and unite the country; or whether, shorn of its strength, it shall become an idle mockery, and perish before the grave has closed upon the last of its illustrious founders."

Freedom cannot be inherited in the blood stream. Each generation will have to defend it and fight for it—then alone will it survive to be passed on to the next. The great lesson of the nightmarish Emergency imposed in June 1975 is that a free democracy can be converted overnight into an authoritarian State where the people fail in their duty as the keepers of the Constitution. Only the husk of democracy—the one man, one vote rite—may survive after freedom has perished.

Justice Frankfurter said, "Democracy is always a beckoning goal, not a safe harbour. For freedom is an unremitting endeavour, never a final achievement." You, my young friends, who are passing out of the portals of this famous University today, will, I trust, keep these words engraved on your minds.

The presidential system

(*The Hindustan Times*, January 7, 1981)

There are at least a dozen different presidential systems prevailing in different parts of the world. Some presidential systems are dictatorial in nature, like those of South America. There are others—like the presidential systems of the U.S.A., France, Switzerland and Sri Lanka—which are as democratic as our Westminster model of government.

It is erroneous to think that the presidential system necessarily involves a higher concentration of power. In fact, the Prime Minister of India today under our Westminster parliamentary model has wider powers than the President of the U.S. It is really the choice of a particular presidential system which decides whether a country will have a dictatorship or a free liberal democracy.

A whole volume can be written upon the varieties of the presidential system which differs from country to country. Under one system, the President selects his cabinet ministers entirely from outside Parliament. There is another variety where he selects them from within Parliament. Under yet another form, the President makes the selection partly from among members of Parliament and partly from outside. A variant is provided by the requirement or otherwise that a member of Parliament selected by the President to join the cabinet should resign his parliamentary seat. But the invariable characteristic of the presidential system in all its different forms is that it makes the President the chief executive or the head of the government, instead of the Prime Minister. And, secondly, unlike the Prime Minister, the President cannot be removed by a vote of no confidence in Parliament.

There are four advantages in having the presidential system patterned on the liberal, democratic model.

First, it enables the President to have a cabinet of outstanding competence and integrity, since the choice is not restricted to Parliament. A wise President can substitute excellence for the deadwood which passes for government today.

Secondly, since the cabinet ministers are not elected, they are not motivated to adopt cheap populist measures which are so costly to the country in the long run. For instance, they would not have to resort to nationalization which is the last refuge of inefficient administrators.

Thirdly, the presidential system permits the cabinet ministers to be absorbed in the job of governing the country, instead of wasting their time and potential in endless politicking.

Fourthly, it would stop defections and desertions on the part of legislators, which are in most cases motivated purely by thirst for power and hunger for office. In France, prior to 1959, and in Italy in recent years, governments lasted on an average less than a year, while in Belgium there were three governments in 1980. Such is the instability to which the Westminster model of parliamentary democracy lends itself.

I have not changed my views regarding the benefits of the presidential system,—apart from the context of the special conditions prevailing in our country. If the people of India were ever to decide to have a presidential system, they will have to consider the various forms of the system which are in force in other free democracies. Having regard to the experience of those countries and our own peculiar needs, we will have to evolve a presidential model of government specially tailored to suit our own requirements. The crucial point is that any presidential system which we choose must be one which is in total conformity with the philosophy of freedom and liberalism underlying our Constitution: it must be one which will preserve and promote all the fundamental rights. In sum, it must be the very antithesis of an authoritarian State.

It is difficult to say, without a study in depth and without a full and detailed examination of the arguments put forward by the proponents and the opponents of the presidential system, whether India would be well advised to scrap the present Westminster model and switch over to the presidential system. No final and conclusive view can be expressed either way, without an exhaustive and dispassionate examination. *Prima facie* and in normal times, I would have thought that there are more advantages in the presidential system than its opponents concede.

But the present is not the right moment to consider seriously a changeover to the presidential system. I think there are three cogent reasons for holding this view.

First, there is a wholly justified and widespread belief throughout the country that if the present ruling party amends the Constitution with a view to introducing a presidential form of government, it will be an authoritarian variant of the presidential system. That belief is well founded on the events since 1973.

In April 1973, a 13-judge bench of the Supreme Court held by a majority in the famous Fundamental Rights case that while Parliament has the power to amend any part of the Constitution, its power does not extend to altering or destroying the basic structure of the Constitution.

During the Emergency, Parliament passed the Forty-Second Amendment Act which provided *inter alia* that notwithstanding any judgment of the Supreme Court, Parliament's amending power shall be absolute and unlimited; and that if the government has any of the directive principles of state policy in mind it is entitled to legislate and act in total disregard of the priceless fundamental rights, namely, the rights to equality before the law, to freedom of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of India, and to practise any profession or to carry on any occupation, trade or business.

The above two provisions of the Forty-Second Amendment Act were struck down by the Supreme Court in May 1980 in the *Minerva Mills'* case* where the Supreme Court reaffirmed that Parliament's amending power did not extend to altering or destroying the basic structure of the Constitution and held that the abrogation of the invaluable human freedoms was void since Parliament had no power to convert this free democracy into an authoritarian State. In a shocking exhibition of the arrogance of power, the ruling party has, ever since the judgment in the *Minerva Mills'* case, been again clamouring for a review of the Supreme Court's ruling. In fact, the Government has made an application, totally unsustainable

* A.I.R. 1980 S.C. 1789. See *ante* pp. 207-17.

under any provision of law, asking the Supreme Court to review its decision in the *Minerva Mills'* case. That application is still pending before the Supreme Court.

I believe that Parliament can introduce a truly democratic form of the presidential system, by way of a valid amendment under art. 368, without altering the basic structure of our Constitution. But it cannot introduce an authoritarian type of presidential system. In nine countries out of ten where the presidential system prevails today, it is undemocratic and authoritarian. Such a system cannot be introduced by amending our Constitution because it would subvert the basic structure of our Constitution which is that of a free democracy.

The bitter fact remains that since May 1980 the Government has been seeking to get the Supreme Court to review its earlier rulings and hold that Parliament has the power to alter and even destroy the democratic framework of the Constitution. That has raised a grave apprehension that the politicians who are the protagonists of the presidential system would like to have the Supreme Court hold that Parliament's amending power is unlimited so that they can thereafter introduce, by a parliamentary amendment of the Constitution, a presidential system which is authoritarian in its nature. After all, if the politicians want to introduce a presidential system which is consistent with human freedoms, there is no need at all for them to ask for a review of the Supreme Court's judgment that the inalienable human rights cannot be abrogated by a constitutional amendment.

Even more important is the fact that when the ruling party thought of introducing the presidential system of government during the Emergency, the scheme which it considered was one which was a model of authoritarianism. If a presidential system is devised for India at present, it would not be by men of liberal vision and love of freedom, but by the type of politicians who during the Emergency framed the Forty-Second Amendment Act and sought to introduce an authoritarian presidential system.

Secondly, the country is facing political, economic and social problems of an unparalleled magnitude, which can never be resolved merely by substituting a presidential system for the Westminster model. Any number of examples can be cited of

countries where the presidential system prevails but which still continue to have poverty and the type of problems which plague India today. The presidential system is no substitute for national character. It does not afford any alternative to vision, knowledge and moral standards in political life. Besides, the whole nation is today in such turmoil that an intelligent and dispassionate discussion without rancour is impossible either within or outside Parliament. When your house is on fire, you do not pause to consider whether the living-room should be converted into a bedroom.

Thirdly, there are a number of changes in our constitutional law which need to be effected to root out corruption and to prevent further degradation of our political life. These are changes on which it would be far easier to get a national consensus than on the question of switching over to the presidential system and which deserve far greater priority than the question of the presidential system. A sense of priorities would dictate that consideration of the benefits of the presidential system can wait till the more urgently required reforms in our constitutional law are first carried out.

14

CENTRE-STATE RELATIONS

Union Government, not Central Government

(*Heras Memorial Lecture*, Bombay, February 18, 1972)

During the past 22 years of the functioning of our republic, various basic principles underlying the Constitution have been thrown overboard. The values of human dignity and public justice have been subverted, and the provisions regarding the powers of the States—including their power to deal with industry, trade and commerce—have been perverted. The States have been reduced to a position where they have far less powers to deal with industries than second class Native States had during the British raj.

It is significant that the Constitution talks of the *Union* but not of the *Centre*. The present all-pervasive domination by the self-styled and popularly called "Centre" is inconsistent with the constitutional scheme of the Union of States. In the exercise of their important and significant powers, the States have the right to go wrong in freedom rather than go right in thraldom to the "Centre".

The day is bound to come when the States will repudiate the wrongful subjection by the Union and will awaken to claim their legitimate status under the Constitution. The day of nemesis may come sooner than we think. We would do well to remember the words of Ralph Waldo Emerson, "The man who thinks he may live as freely as his unconsidered desires prompt him and yet not carry the burden of an eventual reckoning is binding his life to a hollow dream. Whoever sins against his fellows or against himself pronounces his own sentence thereby..... Justice still rules the world with inexorable weight, though its operations are often unseen and though it is not always to be found in stone-built courts of law."

States are not vassals of the Union

(*Seminar on Centre-State Relations,*
Bangalore, August 5-7, 1983
Abridged version, ***India Today,*** **August 31, 1983**)

The largest experiment ever undertaken in human history in the art of democratic living has been carried on in India since 1950. Never before, and nowhere else, has more than one-seventh of the human race lived together in freedom as a single political entity. The uniqueness of this phenomenon is rendered even more impressive by the fact that till 1950 India was never a united country.

In such a situation it is not only natural but inevitable that differences and disputes should arise between the Centre and the 22 States that constitute the Union, and even between the States *inter se.* The problem must be resolved in a spirit of goodwill and with far-sighted vision.

There is no doubt about the great injustices done by the Centre to the States; but it must be remembered that the injuries done to the States are, in a sense, self-inflicted. The Centre is nothing but the States in their federal garb: the Parliament and the Central Government consist of none but the elected representatives of the States (barring the handful of nominated members). The real authors of the injustices are the self-centred representatives of the States who, after being elected to Parliament, have betrayed the true interests of the very States which returned them.

The Constitution provides for a co-operative federation of States with a bias in favour of the Centre. Such a bias, within reasonable limits, is necessary, having regard to the conditions prevailing in our country. The essential question is—what are the reasonable limits within which the constitutional bias in favour of the Union should be contained?

The approach to the problem of Centre-State relations must be governed by the following basic considerations which aim at reconciliation of conflicting viewpoints:

(1) A national consensus should clearly remind the Centre that it has not inherited the Viceroy's mantle of Paramountcy. What is needed at the Centre today is not an authoritarian government but the moral authority to govern. And the Centre would have no moral authority to govern unless it displays a sense of constitutional morality, particularly a sense of justice and fairness towards the States.

(2) We do need a strong Union. But a strong Union is in no way inconsistent with strong States. On the contrary, by definition, a strong Union can only be a Union of strong States.

(3) Where a paramount national interest dictates a line of action, the narrower viewpoint of a State or the parochial attitude of a municipality must not stand in the way.

For instance, the States should be persuaded in the national interest to agree to the substitution of sales tax by additional excise to be levied by the Centre and fairly distributed among the States—thus providing the States with the same growing revenues as they would derive from sales tax after deducting the cost of collection. Similarly, the States should revoke the power granted by them to their municipalities to levy the antiquated octroi, and resources should be raised for the local bodies in more civilized ways. Delays at check-posts range from 30 to 45 per cent of the effective travelling time of commercial vehicles. The 15,000 check-posts where octroi or entry tax is collected in different States result in 15 per cent of fuel consumption being wasted and virtually involve 80,000 trucks being rendered idle.

But these laudable reforms can and should be effected without detriment to the self-respect or the resources position of the States and the municipalities. The Constitution never intended that the Chief Ministers of the States would have to be on a perpetual round of pilgrimages to New Delhi supplicating the Centre for its discretionary bounties.

(4) As far as possible, the grievances of the States should be redressed by building up salutary conventions and traditions which are in conformity with the true spirit of the Constitution, rather than by amending the Constitution. There are good

reasons why constitutional amendment should be treated as the option of the last resort:

(*a*) The Constitution is intended not merely to provide for the exigencies of the moment but to endure through a long lapse of years. We should get accustomed to a spacious view of the great instrument. The Constitution was meant to impart such a momentum to the living spirit of our national identity that the Union of States may remain indestructible beyond our times and in the days when our place will know us no more. Therefore, in dealing with a constitution, the wisest principle to act upon is that when it is not necessary to change, it is necessary not to change.

(*b*) If the Constitution is worked in the right spirit, there would be no need to consider any amendment so far as Centre-State relations are concerned. The problem has arisen today in an acute form because over a period of years the Centre has acted in a manner which at best has been contrary to the spirit of the Constitution and at worst has been tantamount to a fraud upon the Constitution. Many people hastily assume that the working of the Constitution has revealed its grave shortcomings, whereas the truth of the matter is that it is a noble Constitution which has been worked in an ignoble spirit.

(*c*) Today a crisis of national identity broods over the country. We are in the throes of our re-birth as a single nation. Emotions are running high in Assam, the Punjab and some other States. The forces of passion and ignorance are in the ascendant. At such a juncture, to open the door of large-scale constitutional revision may involve a grave danger to the unity and integrity of the country.

Industries and economic development

The States would have made far greater progress if the scheme of the Constitution had been respected in the field of economics. There are three significant Entries in the State List: (*a*) Industries, (*b*) Trade and commerce, and (*c*) Production, supply and distribution of goods. The Union List permits

Parliament to legislate in respect of "Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest". Thus, the basic scheme of the Constitution is that industries and commerce should remain State subjects and should be dealt with primarily by the States; and that it is only those industries, the control of which by the Union is expedient in the public interest, that must be regulated by the Centre.

Parliament passed the Industries (Development and Regulation) Act in 1951, specifying those industries which in the public interest would have to be controlled by the Centre. The Act as originally drafted was fair and reasonable and rightly gave control to the Union over those industries which were vital to national development. However, in course of time, more and more industries were added to the Industries (Development and Regulation) Act till the basic constitutional scheme has now been patently subverted.

Without any amendment to the Constitution, "Industries" has been nefariously transformed into a Union subject and has ceased to be a State subject. Today at least 93 per cent of organized industries, in terms of the value of output, have been brought under the bailiwick of the Union. Even items like razor blades, paper, gum, matchsticks, household electrical appliances, cosmetics, soaps and other toilet requisites, fabrics and footwear, pressure-cookers, cutlery, steel furniture, zip fasteners, hurricane lanterns, bicycles, dry cells, TV sets, agricultural implements—have all been brought under the Centre's control! There can be no doubt that this is an indefensible violation of the Constitution. It is imperative that the States should regain their legitimate powers over industries and commerce.

The true position of the States in commerce and industry, according to the unmistakable mandate of the Constitution, can and should be restored; and for this purpose no amendment of the Constitution is needed. All that is necessary is to delete various items in the First Schedule to the Industries (Development and Regulation) Act. If only industries which are crucial to the national interest were controlled by the Centre and the States were given their rightful jurisdiction over the rest of the field of industry and commerce, those States

which have a balanced and pragmatic outlook on economic problems would benefit tremendously. In order that the nation may not suffer as a result of any States not permitting industries to come up, the Centre may reserve to itself the power to start, or licence the starting of, industrial units in such States. In other words, the position should be that the Centre may step in where a State will not allow industries to commence or develop, unlike the position today when the Centre has the veto where the States want industries to start or grow.

Over-centralization has been one of the main reasons for our poor rate of economic growth which is one of the lowest in the world.

President's rule

Under art. 356, President's rule can be imposed in a State "if the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution".

This power has been grossly abused and President's rule has been imposed on the States more than 70 times. All States, except Sikkim, have been given at one time or another doses of this pretentious curative. Several cases where President's rule has been imposed by the Centre in a partisan spirit for party ends have already passed into history.

The Rajamannar Committee in its Report published in 1971 recommended deletion of art. 356. The other view is that the article would continue to serve a useful purpose if it is invoked *bona fide* in appropriate cases only. It may be better to retain the article while devising some machinery to prevent its misuse.

K. Santhanam, deprecating the imposition of Presidential rule whenever a State ministry is defeated, observed, "Ordinarily, when a ministry is defeated and an alternative ministry cannot be formed, the proper course should be immediate dissolution and re-election so that people of the State would have a chance to decide for themselves. It is only where law and order cannot be maintained and the legislature cannot function in peace that Presidential rule can be really justified. In the discussions in the Constituent Assembly on art. 356, it was emphasized by many speakers that except in cases of civil disorder, Presidential

rule should not be imposed without first a dissolution and general elections."

Appointment of Governors

There has to be a Governor for each State (art. 153). The Governor is appointed by the President (art. 155) and he holds office during the pleasure of the President (art. 156).

According to the judgment of the Supreme Court delivered on May 4, 1979, in *Dr. Raghukul Tilak's* case*, the relationship of employer and employee does not exist between the Government of India and the Governor, and the Governor's office "is not subordinate or subservient to the Government of India". While this is the true constitutional position, we have systematically devalued various constitutional institutions including the office of the Governor. In practice the Governor has been reduced to virtually the same position as that of the Resident Agent in a Native State in the days of the British raj. Several Governors have debased their high office by lending their services to fulfil the partisan objectives of the political party in power at the Centre.

One of the difficult questions is—how to restore the Governorship to the high status envisaged by the architects of the Constitution. The Rajamannar Committee made the following recommendations:

> "The Governor should be appointed always in consultation with the State Cabinet. The other alternative will be to make the appointment in consultation with a high powered body specially constituted for the purpose.
>
> "The Governor should be rendered ineligible for a second term of office as Governor or any other office under Government. He should not be liable to removal except for proved misbehaviour or incapacity after inquiry by the Supreme Court.
>
> "A specific provision should be inserted in the Constitution enabling the President to issue Instruments of Instructions to the Governors. The Instruments of Instructions should lay down guidelines indicating the matters in respect of which the Governor should consult the Central Government

* A.I.R. 1979 S.C. 1109.

or in relation to which the Central Government could issue directions to him. Those Instructions should also specify the principles with reference to which the Governor should act as the head of the State including the occasions for the exercise of discretionary powers."

President's assent to State Bills

A Bill passed by the State Legislature is presented to the Governor and the Governor has to declare "that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President" (art. 200). The President may direct the Governor to return the Bill to the State Legislature with a message requesting reconsideration of the Bill; and if it is again passed by the State Legislature with or without amendment, it is presented once more to the President for his consideration (art. 201), but in no case is the President bound to give his assent.

The object of the Constitution-makers in enacting these provisions was simple and clear. While the constitutionality of any State legislation can always be challenged in a court of law, its wisdom cannot be; and, further, it is better to prevent a clearly unconstitutional measure from reaching the statute book than to have it struck down later by the court. A Governor is expected by the Constitution to reserve only such Bills for the President's assent as are patently unconstitutional or palpably against the national interest. In practice, Governors have been known to surrender their judgment and act as the deferential subordinates of the Central Government in exercising their extraordinary power. Moreover, the Centre's own record in enacting legislation is not such as to justify the belief that it is superior to the States either in wisdom or in knowledge of constitutional limitations.

The Rajamannar Committee recommended repeal of that provision which permits the Governor to reserve any Bill for the consideration of the President. However, this power may be usefully retained, if its indiscriminate use can be checked by some machinery, *e.g.* by providing mandatory guidelines in the Instrument of Instructions to the Governor.

Extra-constitutional authorities

Among the extra-constitutional authorities, the Planning Commission takes the palm. "Economic and social planning" is in the Concurrent List. But no law has been enacted by Parliament in exercise of this power. The Planning Commission is a body without any constitutional or legislative sanction.

The Chairman of the Fourth Finance Commission in his Supplementary Note to the Report described it as a "quasi-political body". K. Santhanam observed that the Planning Commission had set up a sort of vertical federation, thus displacing the territorial or horizontal federation established by the Constitution. The Study Team appointed by the Administrative Reforms Commission observed that planning at the hands of the Planning Commission had the result that "the three horizontal layers of administration, represented by the lists of central, concurrent and state subjects, have been vertically partitioned into plan and non-plan sectors; and... within the plan world, the compulsions and consequences of planning have tended to unite the three horizontal pieces into a single monolithic chunk from the Centre although operated in respect of concurrent and state subjects in the States". Dr. K. Subba Rao was of the view that the Planning Commission "functions in violation of the provisions of the Constitution... The Centre through the Planning Commission controlled not only the State sector of the plan but also their implementation". The Rajamannar Committee was of the view that the "Centre is able to impose its will on the States in the formulation and execution of the plans by virtue of the non-statutory grants under art. 282, which are dependent on the absolute discretion of the Centre. It will thus be seen that the process of planning and the activities of the Planning Commission have a very deleterious effect on the autonomy of the States particularly in spheres exclusively allotted to the States by the Constitution".

The above quoted words of criticism are fully justified. Today there are two types of grants made by the Centre to the States—(*i*) grants-in-aid of the revenues of the States as recommended by the Finance Commission (art. 275); and (*ii*) discretionary grants by the Central Government (art. 282) which are usually made in accordance with the recommendations of the Planning Commission. Of the total grants

disbursed by the Centre to the States, only 30 per cent is as per the recommendations of the Finance Commission, while the remaining 70 per cent represents discretionary grants given to the States on the advice of the Planning Commission.

To remove this distortion of the constitutional scheme, it is necessary that even discretionary grants under art. 282 should be dealt with by a constitutional authority like the Finance Commission, and not by the Planning Commission.

Financial relations

Any fair-minded and impartial observer can have no doubt that having regard to the growing responsibilities of the States, the distribution of taxes and revenues is very unfair to the States and far too favourable to the Centre.

Taxes on income are levied and collected by the Government of India and distributed between the Union and the States [art. 270(1)]. But the expression "taxes on income" does not include corporation tax [art. 270(4)]. "Corporation tax" means any tax on income which is payable by companies and for which no credit is given to the shareholders who receive dividends from the companies [art. 366(6)]. As a result of the changes made by the Finance Act, 1959, all income-tax paid by limited companies must now be treated as corporation tax, and consequently the States are not entitled to any share of it.

Union duties of excise may be shared between the Union and the States but only "if Parliament by law so provides" (art. 272). The Chairman of the Fourth Finance Commission referred to the possibility of making a constitutional amendment placing excise duties on the same footing as income-tax, that is, making excise duties also divisible between the Union and the States.

Even when a tax or duty is compulsorily divisible between the Centre and the States, the Union has the right to levy a surcharge which is excluded from the divisible pool (art. 271). This extraordinary power is exercised in the most ordinary fashion: every annual budget contains the levy of a surcharge on income-tax exclusively for the purposes of the Union.

The Seventh Finance Commission had recommended that 40 per cent of the central excise duty should be transferred to the States. In the last three years the Centre stopped

raising rates of excise on items like petroleum, iron and steel, aluminium and coal, but only raised the prices. The entire benefit of this increase in prices goes to the Centre which is the producer and seller of the goods. According to a recent speech of the West Bengal Finance Minister, by raising prices instead of excise the Centre gathered additional revenues of Rs. 6500 crores in which the States are not entitled to a share, whereas, if the excise had been increased, Rs. 2600 crores would have come to the States as per the recommendation of the Seventh Finance Commission.

The States must be given a legal right to a larger share in the tax revenues collected by the Centre, instead of having to rely upon the discretionary largess of the Union under art. 282.

Inter-State Council and constitutional conventions

The formation of an Inter-State Council as envisaged in art. 263 of the Constitution is long overdue. The Conference of the Council of Chief Ministers held on March 20, 1983, on the initiative of the Karnataka Chief Minister, was a significant constitutional development. Active co-operation among the States should be institutionalized and States must solve their inter-State problems by mutual discussion and negotiation. For example, problems regarding electricity, water and rivers should be sorted out by the States themselves without the intervention of the Centre. Imaginative co-operation between the States would be a most fruitful way of counteracting excessive domination by the Centre.

It is a pity that there should be the need for a union of States—as distinct from the Union of States which the Centre is supposed to be—but the States are left with no other alternative under the present setup.

The ways in which the Centre unduly dominates the States are beyond enumeration and are symptomatic of the Centre's attitude towards its "vassals". Exceptional constitutional powers are used in a routine manner, and standards of constitutional decency are unknown. There is no political will to let healthy conventions grow up to serve as guides to the Centre in its manifold dealings with the States.

An unfailing index to the maturity of a democracy is the degree of its respect for unwritten conventions. By this criterion

of maturity, the Indian democracy must be regarded as being still in its swaddling clothes. Not only have we failed to build up any conventions, but we have thrown to the winds even those norms of decency and decorum in public life which prevailed in India when we became a republic.

Dr. K. Subba Rao wisely observed: "Unless the party that happens to be in power in the Centre develops conventions to shed its party affiliations in the matter of its relations with the States, the federal Government cannot effectively function in our country".

The only lasting solution

Those who are in favour of major constitutional amendments to re-define relations between the Centre and the States, must come to terms with one profound truth.

The only satisfactory and lasting solution of the vexed problem is to be found not in the statute-book but in the conscience of men in power. The long-suffering States can be given redress not by a change of law but by a change of heart. The ultimate guarantees of a fair deal to the States are the individual conscience of the representatives they return to Parliament and a vigorous and well-informed public opinion.

We must get away from the fallacy of "the legal solubility of all problems". In a constitution what is left unsaid is as important as what is said. Our constitutional equilibrium can be preserved only by Obedience to the Unenforceable.

The survival of our democracy and the unity and integrity of the nation depend upon the realization that constitutional morality is no less essential than constitutional legality. *Dharma** lives in the hearts of public men; when it dies there, no constitution, no law, no amendment, can save it.

* Righteousness; sense of public duty or virtue.

PART IV

Personalities, Diplomacy and the Law

15
THE GREAT AND THE EMINENT

The relevance of Sri Aurobindo's philosophy today

(All India Radio, Bombay, August 14, 1972)

August 15 is the birthday of free India. It is also the birthday of Sri Aurobindo, one of the greatest men that ever lived. He combined an intellect of the highest order with a rarely equalled spiritual force and a vision that transcended the limits of time and space.

He had an unshakable faith in the future of this great country. Having predicted the eventual independence of India three decades before the event, he wrote a Declaration on August 15, 1947, which is of momentous significance. After stating that the coincidence between the birthday of free India and his own was not a fortuitous accident, but represented the sanction and seal of the Divine Force that guided his steps in all his life-work, he dealt with the evolution of mankind and India's role in the unfolding future. World movements had begun in which free India might well play a large part and take a leading position. Deploring the fact that the old communal division into Hindus and Muslims seemed to have hardened, he predicted that in the years ahead, India and Pakistan would ultimately come closer together and stand united. In his own words, "Unity may finally come about under whatever form—the exact form may have a pragmatic but not a fundamental importance. But by whatever means, in whatever way, the division must go; unity must and will be achieved, for it is necessary for the greatness of India's future."

The ideal of human unity

Sri Aurobindo in the same Declaration on Independence Day gave expression to his vision of the ideal of human unity.

"Nature is slow and patient in her methods. She takes up ideas and half carries them out, then drops them by the wayside to resume them in some future era with a better combination. She tempts humanity, her thinking instrument, and tests how far it is ready for the harmony she has imagined; she allows and incites man to attempt and fail, so that he may learn and succeed better another time".

He foresaw a world union providing a fairer, brighter and nobler life for all mankind. That unification of the human world is under way; the momentum is there and it must inevitably increase and conquer. "A catastrophe may intervene, and interrupt or destroy what is being done, but even then the final result is sure. For, unification is a necessity of Nature, an inevitable movement. Its necessity for the nations is also clear, for without it the freedom of the small nations may be at any moment in peril and the life even of the large and powerful nations insecure."

He wanted developments such as dual or multilateral citizenship, interchange or fusion of cultures. Nationalism having fulfilled itself must lose its militancy and should no longer find the international outlook incompatible with self-preservation. The European Common Market today seems to be a partial fulfilment of Sri Aurobindo's prediction.

Message to students

Sri Aurobindo's philosophy was expressed in words which are within the comprehension of any thinking man. His message to students was memorable: "There are times in a nation's history when Providence places before it one work, one aim, to which everything else, however high and noble in itself, has to be sacrificed. Such a time has now arrived for our Motherland when nothing is dearer than her service, when everything else is to be directed to that end. If you will study, study for her sake; train yourselves, body and mind and soul, for her service. You will earn your living that you may live for her sake. You will go abroad to foreign lands that you may bring back knowledge with which you may do service to her. Work that she may prosper. Suffer that she may rejoice. All is contained in that one single advice."

According to Sri Aurobindo, the task free India has set

before herself is moral and spiritual. He believed in *dharma** as a mighty law of life, a great principle of human evolution, a body of spiritual knowledge and experience of which India has to be the guardian, exemplar and missionary. He wanted the spirit of *dharma* to enter into and mould our society, our politics, our literature, our science, our individual character and aspirations.

At the same time, he wanted India to benefit from the developments in the West. "India can best develop herself and serve humanity by being herself and following the law of her own nature. This does not mean, as some narrowly and blindly suppose, the rejection of everything new that comes to us in the stream of Time or happens to have been first developed or powerfully expressed by the West. Such an attitude would be intellectually absurd, physically impossible and, above all, unspiritual; true spirituality rejects no new light, no added means or materials of our human self-development."

The role of the State

The core of Sri Aurobindo's political philosophy is that the State exists for the individual and not the individual for the State.

Sri Aurobindo expressed his views about the ideal form of government in the following words: "The Government is for the people. It must provide for stability as well as progress. Stability may be achieved by unity and co-operative action, and progress by free individual growth. The Government should be run by people who are selfless, unegoistic, scrupulously honest and capable. Their allegiance should be to the whole country; they should serve the interests of the whole country and not of any party. If the present Constitution does not permit such men, irrespective of parties, to be in the Government, then the Constitution should be changed."

He further observed that it is the energy of the individual which is the really effective agent of collective progress.

The falsehood of modern political life

Sri Aurobindo believed that the State failed in its duties because the ruling class did not represent "the best minds of the

* Righteousness; sense of public duty or virtue.

nation or its noblest aims or its highest instincts". His portrait of the average politician is incisive and devastating:

> "The modern politician in any part of the world does not represent the soul of a people or its aspirations. What he does usually represent is all the average pettiness, selfishness, egoism, self-deception that is about him and these he represents well enough as well as a great deal of mental incompetence and moral conventionality, timidity and pretence. Great issues often come to him for decision, but he does not deal with them greatly; high words and noble ideas are on his lips, but they become rapidly the claptrap of a party. The disease and falsehood of modern political life is patent in every country of the world and only the hypnotized acquiescence of all, even of the intellectual classes, in the great organized sham, cloaks and prolongs the malady, the acquiescence that men yield to everything that is habitual and makes the present atmosphere of their lives. Yet it is by such minds that the good of all has to be decided, to such hands that it has to be entrusted, to such an agency calling itself the State that the individual is being more and more called upon to give up the government of his activities. As a matter of fact, it is in no way the largest good of all that is thus secured, but a great deal of organized blundering and evil with a certain amount of good which makes for real progress, because Nature moves forward always in the midst of all stumblings and secures her aims in the end more often in spite of man's imperfect mentality than by its means."

National education

His philosophy regarding the ideal system of education may be summed up in his own words as follows. *First,* it is essential that society should refuse to give exclusive importance to success, career and money, and that it should insist instead on the paramount need of the full and real development of the student by contact with the Spirit and the growth and manifestation of the Truth of the Being in the body, life and mind.

Secondly, the country must give top priority to the needs of education, and organize the whole life of the nation as a perpetual process of education.

Thirdly, the country must make full and wise use of all the modern techniques of communication, such as, cinema, television, books, pictures and magazines, for spreading the ideal of perfection.

Fourthly, permanent exhibitions and museums should be planned all over the country, even in villages, which could be the centres of stimulating knowledge, including the inner significance and goal of evolution.

Fifthly, teachers must grow into real examples of the perfection that is aimed at.

Finally, the country as a whole should engage itself in the activity of the discovery and realization of its true mission.

Above all, Sri Aurobindo believed that if India is to survive and do her appointed work in the world, the first necessity is that the youth of India should learn to think,—to think on all subjects, to think independently, fruitfully, going to the heart of things, not stopped by their surface, free of prejudgments, shearing sophism and prejudice asunder as with a sharp sword, smiting down obscurantism of all kinds as with the mace of *Bhima.**

The Supramental

The greatest contribution of Sri Aurobindo to philosophy is the vast body of his writings which deal with the adventure of consciousness, man's striving to reach the Supramental. He believed that the next step in evolution would raise man to a higher and larger consciousness which would offer the solution for the problems which have perplexed and vexed him since he first began to think and to dream of individual perfection and a perfect society.

Sri Aurobindo knew that the difficulties in the way of attaining the Supermind are more formidable than in any other field of endeavour; but difficulties were made to be overcome, and if the Supreme Will is there, they will be overcome. He further believed that this evolution must proceed through a growth of the spirit and the inner consciousness. The initiative here can come from India and, although the scope must be universal, the central movement would have to be in our country.

Sri Aurobindo said that this transformation of the human

* A warrior of ancient India.

race would come about in an iridescent moment which will look like a miracle. Even when the first decisive change is reached, it is certain that all humanity will not be able to rise to that level. This endeavour to be in the supramental sphere will be a supreme and difficult labour even for the individual, but much more for the human race generally. Nevertheless, it would be a transformation and a beginning far beyond anything yet attained.

It is a measure of the distressing apathy of our nation that the works of Sri Aurobindo are not studied throughout the length and breadth of India. The words of wisdom from the writings of this great spirit deserve to be taught in every school and college.

No other thinker of modern times has seen so vividly the pattern of the human cycle down the ages and in the aeons of existence that lie ahead. His life-work will always remain a feasting presence, full of light.

India has lost her soul

(Evening of January 30, 1948)

The world's greatest peacemaker has paid the price for peace.

Mahatma Gandhi is dead, killed by one of the very people to whose salvation he devoted his entire life. Only a few days ago we were going through the most anxious time because of the fast unto death he had undertaken so that sanity may be restored in the country. The nation begged of him to change his mind, and gave him no end of assurances that it would live in peace. The Mahatma submitted to the will of the people. There was universal relief—prayers of joy and services of thanksgiving. Barely a fortnight passed. Then comes the most tragic day in the history of India, when her noblest son lies riddled with an assassin's bullets. The heart which bled at the sight of the misery of others has today bled to death with three death-dealing slugs buried deep in it.

Stunned into incomprehension, we are unable to understand why anyone—anyone at all in the whole wide world, however malicious or evil, however revengeful or perverted—would want to lay hands on the one man who sought so much for peace and suffered so much for it. And yet such a one was found among us, who has perpetrated the most heinous of crimes.

The Mahatma has gone the way of all saints. India has lost her soul. But his spirit lives—and that spirit will live among us, as long as India survives.

The two dreams of Gandhiji

(Washington, D.C., August 15, 1978)

On the 15th day of August, 1947, India had the immortal hour of her tryst with destiny. On that day, great national leaders of India were in New Delhi. But the greatest of them all, Mahatma Gandhi, was not there. The bugles were sounded and the trumpets were blown, but he was not there to take the salute. A thousand cameras clicked and the limelight beat fiercely on the political stage, but he was not there to take the bow. At that time, he was working among the poor of Bengal.

The reason for his absence was simple. He had two dreams in his life. His first dream was fulfilled, but the second was not; and according to the Mahatma, the true time for celebration would be when the second dream was fulfilled. His first dream was liberation of India from British rule. The second dream was liberation of Indians from oppression and injustice, from inequity and inequality, from discord and disharmony. To quote his own words:

> "I shall work for an India in which the poorest shall feel that it is their country in whose making they have an effective voice, an India in which there shall be no rich class and no poor class of people, an India in which all communities shall live in perfect harmony. This is the India of my dreams."

On the anniversary of Independence Day, we can do no better than rededicate ourselves to the unceasing task of fulfilling the Mahatma's second dream.

Do we deserve Gandhiji?

(All India Radio, Bombay, January 30, 1975)

Seven and twenty years ago, on Friday, January 30, the greatest apostle of non-violence fell a victim to the assassin's bullet. So bright and luminous a spirit has rarely cleansed civilization. The Mahatma's life-work and position in world history were memorably summed up by Albert Einstein:

> "The veneration in which Gandhi has been held throughout the world rests on the recognition, for the most part unconscious, that in our age of moral decay he was the only statesman who represented that higher conception of human relations in the political sphere to which we must aspire with all our powers. We must learn the difficult lesson that the future of mankind will only be tolerable when our course in world affairs, as in all other matters, is based upon justice and law rather than the threat of naked power..... Generations to come will scarce believe that such a one as this ever in flesh and blood walked upon this earth."

The younger generation in India, who enjoy the fruits of Gandhiji's countless sacrifices and his ceaseless labours, will not know the magic of his personality. A leader of his people, unsupported by any outward authority; a politician whose success rested, not upon craft or guile, but simply upon the moral grandeur of his soul; a victorious fighter who pushed back the mightiest empire on earth without the use of force; a spirit of profound wisdom and captivating humility, armed with only an iron will and inflexible resolve; a frail man who confronted the brutality of military strength with the dignity of a simple human being. As Will Durant observed, centuries hence the Mahatma will be remembered when of his contemporaries hardly a name will survive. Seldom has any life known to history been so marked by gentleness, disinterestedness, simplicity of soul, and forgiveness of enemies.

To the Mahatma, Truth was God and non-violence was religion. At his memorable trial for sedition in 1922, he said,

"Non-violence is the first article of my faith. It is also the last article of my creed." In non-violence bravery consists in dying, not in killing. His compassion and humanity were as boundless as the universe. "Gather together", he said, "under one banner all men from all religions and races of India and infuse into them the spirit of solidarity and oneness to the utter exclusion of all communal and parochial sentiments". And again, "My Hinduism is not sectarian. It includes all that I know to be best in Islam, Christianity, Buddhism and Zoroastrianism. Truth is my religion and *ahimsa** is the only way of its realization."

He aroused the people, more widely than anyone had done before in history, to the evils of social injustice. He took it upon himself to awaken the conscience of the human race. The world saw the astonishing phenomenon of a revolution led by a saint. He was no "ineffectual angel beating in the void his luminous wings in vain". He claimed and proved himself to be a practical idealist and showed how goodness can be made effective. He strove successfully to liquidate the system of indentured labour in South Africa. He fought more valiantly than anyone else against the horrors of untouchability and the other social wrongs which are a blot on Indian society. In 1925 he said, "Untouchability is our greatest shame. The humiliation of it is sinking deeper." To him, the injunction of the *Gita* was to regard a *brahmin* and a *harijan*† as equals.

His historical struggle against imperialism and colonial rule led not only to India becoming free but helped to create a world atmosphere conducive to the liberation of a hundred countries.

Gandhiji has been often branded as an idealist in economics, by those who have not taken the trouble to understand the basis of his convictions. To Gandhiji, the spinning wheel was a symbol and means of identification with the hungry masses. They were his first care and his last. He recognized no God "except the God that is to be found in the hearts of the dumb millions". He did not rule out the use of machinery or

* The principle of non-violence.

† A member of the untouchable or lowest caste.

the aid of science, provided they were adapted to the economic and social needs of the masses. "I have no objection", he said, "if all things required by my country could be produced with the labour of thirty thousand instead of that of three crores; but those three crores must not be rendered idle or unemployed. The central idea is . . . to utilize the idle hours of the nation and thus by natural processes to help it get rid of its growing pauperism. . . The entire foundation of the spinning wheel rests on the fact that there are crores of semi-employed people in India and I should admit that if there were none such, there would be no room for the spinning wheel. . . I would favour the use of the most elaborate machinery if thereby India's pauperism and resulting idleness could be avoided."

He was untiring in his efforts to eliminate or reduce unnecessary State controls. He said, "I look upon an increase in the power of the State with the greatest fear because, though apparently doing good by minimizing exploitation, it does the greatest harm to mankind by destroying individuality which lies at the root of all progress."

To Gandhiji all private wealth was to be held upon public trust; its possessors had to use it for the good of their fellowmen. In his own words, "The relation between mill agents and mill hands ought to be one of father and children or as between blood brothers. You should hold all your riches as a sacred trust to be used solely in the interests of those who sweat for you and to whose industry and labour you owe all your position and prosperity. I want you to make your labourers co-partners of your wealth. . ." What belongs to you is "the right to an honourable livelihood, no better than that enjoyed by millions of others". The rest of your wealth "belongs to the community and must be used for the welfare of the community". With characteristic perspicacity, he did not call himself a *socialist* but a *believer in social justice.*

Gandhiji held that the life of a good citizen was the life of *karma*—action in the service of the country. "My writings should be cremated with my body," he said. "What I have done will endure, not what I have said or written." Our century

has produced few better examples of dedicated action than the Mahatma's life of good works—a life marked by infinite patience and infinite love, immaculate sincerity and indomitable courage.

Our systems and ideologies may be relevant at one time and irrelevant at others. But the teachings of this great and benign lamp of wisdom and humanity are for endless time. He gave us the priceless gift of self-respect and the sense of dignity as a nation.

The hatred and fanaticism which consumed the body of the Mahatma did not touch his great soul. Let us go back to his imperishable teachings so that we, who did not deserve Gandhiji during his life, may at least deserve him a little after his death.

Mahatma – the pilgrim of eternity

(The Mahatma Gandhi Memorial Foundation, Washington, D.C., October 2, 1978)

The second of October has again come by, and our hearts and minds go back to the pilgrim of eternity. Smt. Kamala, the Director of this Gandhi Memorial Centre, gave us a beautiful thought when she said that a part of all the great spirits of the past might have found a place within the soul of Mahatma Gandhi.

Gandhiji's impact on those who came in contact with him was almost magical. Dr. Rabindranath Tagore said:

> "At Gandhiji's call India blossomed forth to new greatness, just as once before in earlier times when Buddha proclaimed the truth of fellow-feeling and compassion among all living creatures."

Even so hard-headed a man as George Bernard Shaw, to whom praise of others did not come very naturally, when asked for his impression upon meeting Mahatma Gandhi, said: "You might as well ask for someone's impression of the Himalayas!" Romain Rolland, the great French writer and Nobel prize winner, said that Mahatma Gandhi "had introduced into human politics the strongest religious impetus of the last two hundred years". If instead of two hundred years he had said twelve hundred years, he would have been still right.

The Mahatma met Charlie Chaplin, confessed to him frankly that he had not seen his pictures, and expounded to him his theory about the disastrous effects of the machine on human life. Their conversation led Charlie Chaplin to produce "Modern Times".

In our own times, Anwar Sadat of Egypt has publicly spoken about the tremendous influence Mahatma Gandhi's writings had on him.

Gandhiji gave a decisive new direction to history. What was it about this man which held the human race in thrall? Who was this individual? And how did he come to wield such

influence over the rest of mankind? He himself said that he was a very average individual. He confessed that he was not intellectually brilliant, but he added that while there are limitations to the development of the mind, there are no limitations to the development of the heart.

If one were to denote in a word what the Mahatma had, it is the Sanskrit word, *buddhi*,—the capacity *inter alia* to perceive the Truth. This is a capacity which few individuals have, and you can develop it only by deep self-study, by profound devotion. He was able, as a result of his *buddhi*, to propound solutions which went far beyond the insights of any academic studies of politics or economics or science. Let me tell you what he said about himself: "What I want to achieve—what I have been striving and pining to achieve these thirty years—is self-realization, to see God face to face, to attain *Moksha**. I live and move and have my being in pursuit of this goal. All that I do by way of speaking and writing, and all my ventures in the political field, are directed to this same end. I am but a weak aspirant, ever failing, ever trying. My failures make me more vigilant than before and intensify my faith. I can see with the eye of faith that the observance of the twin doctrine of Truth and Non-violence has possibilities of which we have but very inadequate conception."

The pregnant phrase "the eye of faith" reminds you of the lines of George Santayana:

> *"Columbus found a world, and had no chart,*
> *Save one that faith deciphered in the skies;*
> *To trust the soul's invincible surmise*
> *Was all his science and his only art."*

It was the only science and the only art of Mahatma Gandhi—to trust the soul's invincible surmise.

Before I go further into some of the ideas which the Mahatma propagated, I would like to mention one interesting point. There seems to be a mystic—*karmic*—bond between the United States and India, and you see this link in the case of Mahatma Gandhi. When he was in South Africa (he went there

* Ultimate salvation upon merger into the Supreme Being.

in 1893), the two foreigners who befriended him were both Americans. They gave him succour and shelter. After he came back to India, the first foreigner to spot his incredible spiritual strength was an American. On April 10, 1922, Reverend John Haynes Holmes delivered a speech in an American Church on "Who is the Greatest Man in the World?" Reverend Holmes declared that he had no doubt that the greatest man alive was Mahatma Gandhi. He compared the Mahatma to Christ. In 1922 no other foreigner had the conception of the Mahatma as the prophet of the 20th century.

Then came the great years of Mahatma Gandhi in India. There he started his civil disobedience movement, which he implemented with phenomenal success. The one person who influenced him the most in his thinking on civil disobedience was again an American — Henry David Thoreau. He had read Thoreau in the year 1907 when he was in South Africa. He had reproduced extracts from Thoreau's writings in *Young India* which he was editing at that time in South Africa.

The last man to be the disciple of the Mahatma was an American — Vincent Sheean. He met the Mahatma in Delhi on January 27, 1948, three days before the Mahatma was assassinated, and offered himself as a disciple. The Mahatma talked to him at some length on that day on a variety of subjects, and quoted to him the lines from the *Upanishads*: "The whole world is the garment of God; renounce it then and receive it back as the gift of God." Sheean was most impressed and met him again on the 28th. They were to meet again in the evening of the 30th, but that was not to be.

The last interview which the Mahatma gave was in the early afternoon of January 30, and it was to an American. She was Margaret Bourke-White who came to interview him for *Life* magazine. She asked him the question: Would he persist in his theory of non-violence in the event of a nuclear attack on a city? The Mahatma's reply was that if the defenceless citizens died in a spirit of non-violence, their sacrifice would not be in vain; they might well pray for the soul of the pilot who thoughtlessly sprayed death on the city. This was his last message of compassion to mankind.

In our times his influence on America has been of the most significant character. It was his influence which led Martin

Luther King to start a civil disobedience campaign on non-violent lines. Vice-President Mondale has publicly stated how deeply influenced he was as a young man by Mahatma Gandhi's teachings.

President Carter is another great admirer of the Mahatma. When Hubert Humphrey died, there was one quotation in President Carter's tribute to the eminent Senator and that was what the President had read at the Gandhi Samadhi in New Delhi. The words quoted enumerate what Gandhiji regarded as the Seven Deadly Sins:

"Commerce without ethics;
Pleasure without conscience;
Politics without principle;
Knowledge without character;
Science without humanity;
Wealth without work;
Worship without sacrifice."

Let me now say a few words about the Mahatma's ideas which have changed the course of human history. His main emphasis, as we all know, was on truth and non-violence. A thinker has said that truth is a scarce commodity, but its supply has always outstripped the demand. While truth does not seem to be triumphing all around us—somehow, somewhere, in some way, something is working which is bringing the human race closer to truth.

"Truth forever on the scaffold,
Wrong forever on the throne—
Yet that scaffold sways the future,
and behind the dim unknown
Standeth God within the shadow,
keeping watch above His own."

The Mahatma had an unshakable conviction that God always keeps watch above His own.

This is what the Mahatma has to say about truth and non-violence:

"I may be a despicable person; but when Truth speaks through me, I am invincible."

"Truth alone will endure; all the rest will be swept away before the tide of Time."

"Non-violence is the law of our species, as violence is the law of the brute."

"Non-violence is the greatest force at the disposal of mankind. It is mightier than the mightiest weapon of destruction devised by the ingenuity of man."

"I do not believe in short cuts which involve violence. However much I may sympathize with and admire worthy motives, I am an uncompromising opponent of violent methods even to serve the noblest of causes. There is, therefore, really no meeting-ground between the school of violence and myself."

It was not a personal God that the Mahatma believed in. He had the very, very deep and profound Hindu concept of *Brahma*— the all-pervading Reality, which is God in its various manifestations. It is that God that he believed in. To quote his own words:

"To me God is Truth and Love; God is Ethics and Morality; God is fearlessness; God is the source of Light and Life, and yet He is above and beyond all these. He is even the atheism of the atheist; he transcends speech and reason."

Ralph Waldo Emerson, who was well-versed in Indian culture, has written a poem called *Brahma,* where this very idea is memorably expressed:

"They reckon ill who leave me out;
When me they fly, I am the wings;
I am the doubter and the doubt,
And I the hymn the Brahmin sings."

God is the doubter and the doubt, and God is the atheist and his atheism. In other words, there is just no escape from Him. The same thought was expressed by Francis Thompson in *The Hound of Heaven.* Ultimately the sceptic realizes that God has been by his side all the time.

Another sentence from Gandhiji: "Scriptures cannot transcend reason and truth; they are intended to purify reason

and illuminate the truth." He tried to synthesize the essentials of all religions: "Indeed religion should pervade every one of our actions. Here religion does not mean sectarianism. It means a belief in ordered moral government of the universe. It is not less real because it is unseen. *This religion transcends Hinduism, Islam, Christianity, etc.* It does not supersede them. It harmonizes them and gives them reality."

He identified himself completely with the common man. He spoke and he worked not for the ruler

> *"but the ranker, the tramp of the road,*
> *The slave with the sack on his shoulders*
> *pricked on with the goad,*
> *The man with too weighty a burden,*
> *too weary a load."*

As regards the need of identifying oneself with the masses, he observed—

> "We must first come in living touch with them by working for them and in their midst. We must share their sorrows, understand their difficulties and anticipate their wants. With the pariahs we must be pariahs and see how we feel to clean the closets of the upper classes and have the remains of their table thrown at us. We must see how we like being in the boxes, miscalled houses, of the labourers of Bombay. We must identify ourselves with the villagers who toil under the hot sun beating on their bent backs and see how we would like to drink water from the pool in which the villagers bathe, wash their clothes and pots, and in which their cattle drink and roll. Then and not till then shall we truly represent the masses and they will, as surely as I am writing this, respond to every call."

The Indian masses responded to the Mahatma's call in a spirit of total surrender.

When he was fighting for India's independence, he expressed a thought which so many Indians forgot during the Emergency:

> "Real *Swaraj* will come *not by the acquisition of authority by a few but by the acquisition of the capacity by all to resist authority when it is abused.* In other words, *Swaraj* is to be obtained by educating the masses to a sense of their capacity to regulate and control authority."

The Mahatma repeatedly mentioned that his mission was not merely to achieve freedom for India but, through realization of freedom for India, to carry on and fulfil the mission of the brotherhood of man and that he was really involved in achieving the broadest good of humanity at large.

As Ambassador Chester Bowles said, the Mahatma's work and life have affected every single person in the world. Louis Fischer, the journalist, says in his portrait of Mahatma Gandhi:

> "The more I have thought about his life, the clearer becomes his relevance to the worries of the Western world today."

When the Mahatma died, Jawaharlal Nehru made an impromptu speech on the radio where he said that "the light has gone out of our lives" and then corrected himself:

> "The light has gone out, I said, and yet I was wrong. For, the light that shone in this country was no ordinary light. The light that has illumined this country for these many years will illumine this country for many more years, and a thousand years later that light will still be seen in this country and the world will see it and it will give solace to innumerable hearts. For that light represented . . . the living truths . . . the eternal truths, reminding us of the right path, drawing us from error, taking this ancient country to freedom."

Thousands of tributes were received in New Delhi within hours of his death, and one of the finest was that of Mrs. Sarojini Naidu:

> "May the soul of my master, my leader, my father, rest not in peace! Not in peace — my father — do not rest! Keep us to our pledge! Give us strength to fulfil our promises — your heirs, your descendants, guardians of your dreams, fulfillers of India's destiny."

The Mahatma dealt with problems which are timeless and universal, because they spring from enduring weaknesses of human nature and human society. Since the solutions he found for them were based on eternal verities, his influence and his relevance are also timeless and universal.

On this 2nd day of October, we can have no better wish for India than that the great spirit of the Mahatma may always abide with our people.

Rajaji — a man for all seasons

(On the 101st birth anniversary of C. Rajagopalachari, December 10, 1979)

It was Winston Churchill who said that one mark of a great man is the power of making lasting impressions upon people he meets; and another is so to have handled matters that the course of after events is continually affected by what he did. C. Rajagopalachari — loved and respected by millions as Rajaji — fulfilled both these hard tests.

If greatness consists in the combination of character and intellect of the highest order and if it is to be measured by the lasting value of solid work done in the fields of thought and action, Rajaji was beyond question one of the outstanding men in world history.

Rajaji played many parts with great distinction and ran through the gamut of high public offices, including the highest. He was close to the heart of power for decades, but the corroding power of power left his inborn simplicity and humbleness untouched.

The bane of India is the plethora of politicians and the paucity of statesmen. Rajaji was a true statesman. He had been sometimes wrong; but no other public figure had been so often right and on so many diverse matters.

As Chief Minister of Tamil Nadu and as a Cabinet Minister at the Centre, Rajaji practised and preached true socialism. He felt deeply for the poor, without, to use his own phrase, "the condescension of aristocracy or the sense of extraordinary virtue".

Rajaji had a mind like a razor. His mental processes worked for decades with incredible speed and incisiveness. His towering intellect cut sharply into the heart of a matter and then with the lift and power of imagination he offered solutions for the troubled sub-continent. The sweep of his mind was matched

only by the range of his reading. His vision was almost uncanny. Gandhiji once said, "Rajaji sees at least six months ahead of me". John F. Kennedy described the impact of Rajaji on him as "one of the most civilizing influences since I became President".

No problem was ever too big for his capacity or too small for his attention. He was a perfectionist in everything that he did.

He had the rare gift of being able to speak to different men at different levels. He could carry conviction to intellectuals with his power of deep thought and precise expression; he could address the masses equally effectively in terms which could stir their minds and hearts.

In an age when "leaders" do not lead the masses but are led by the masses, when the clamour is for the false, glittering political popularity which like faerie gold vanishes even at the touch, Rajaji stood firmly by his beliefs. His intellectual integrity, his indomitable courage and his absolute simplicity became proverbial. However winds might veer or currents shift, Rajaji always steered by the same star, and that star was his conscience and his inner conviction. During the six decades that he was in public life, none was ever able to overcome his iron will or rupture his sense of public duty.

Seldom has so much been packed into one human life. Rajaji's English translations of Sanskrit classics and his Tamil books on European classics are among the finest in the field. What made him tower over the stormy scene for so long was the fact that he, the man of thought, was also a dynamic man of action. He has rarely been equalled as an administrator. He had that unfailing, uplifted mental and moral vision, combined with the art of adroit and practical management of men and affairs, which is so essential for those who guide the footsteps of nations.

Generations later, Rajaji will be remembered and revered when most of those who dominate the political scene today are totally forgotten. He carried the story of Indian independence forward into a new chapter—Freedom from subjugation of Indians by Indians—the full significance of which will be realized only in the years to come.

Not for Rajaji was the satisfaction of enjoying in placid quiet the autumn years of his life. In him, even at the age of 93, there was the intense, unrelenting fervour to carry on with the task that could never end.

Of all his great achievements, perhaps Clio will regard his achievement after the age of 80 as his greatest. Surrounded by politicians whose minds were shrouded in opaque ignorance, he once more decided to do what he had so often done in the past—blaze a new trail. At a time when, despite a Constitution which enshrined the highest ideals of liberty and freedom, the citizens' basic freedoms were stifled by an all-powerful bureaucracy, when a permit-quota-licence raj laid its steel claws upon the nation's economy, and corruption enveloped the land, this frail man of 80 rose once again at the centre of the national scene, and campaigned in support of true freedom.

The old world of culture and *dharma**, of values and decorum in public life, seemed to be doomed; but it did not lack its standard-bearer. He started a new political party. Pithy, trenchant thoughts and phrases poured from his mind week after week. His articles in *Swarajya* and his speeches in various States acted as a solvent of fear and despondency. In the crowded story of freedom and democracy there is no parallel to what Rajaji attempted during his last 13 years.

Perhaps no other figure in world history, at Rajaji's age and against such overwhelming odds, tried so much, dared so much, toiled so much and gave so much to his people. This man, cast in a heroic mould, sought to bring back to India the Spirit of Liberty, to whose defence he summoned every resource of oratory and dialectic, character and action.

The spirit knows no youth or age, no fatigue or death. Only a man nourished by deep spiritual sustenance and by an abiding faith could think and labour as Rajaji did in his last years. His innate modesty made him conscious that he was only the humble instrument for carrying out the design of the Higher Forces that shape the destinies of men and nations.

* Righteousness; sense of public duty or virtue.

Rajaji personified the courage never to submit or yield. You could truthfully apply to him the great words of Milton:

"... unmoved,
Unshaken, unseduced, unterrified,
His loyalty he kept, his love, his zeal;
Nor number, nor example with him wrought
To swerve from truth or change his constant mind."

Sir Jamshedji B. Kanga

(On his 70th Birthday, February 27, 1945)

Dr. Johnson said that if a man were to go by chance at the same time with Burke under a shed to shun a shower, he would say,—"this is an extraordinary man." If a man were to go by chance into the court and hear Sir Jamshedji Kanga argue for a few moments he would say,—"this is an extraordinary legal mind."

A tall commanding figure, by his sheer presence he reduces all around him to less than life-size.

The full biblical span of life has unrolled beneath his feet, leaving him untouched. Black-haired at seventy, he has the irrepressible buoyancy, vigour and agility of life's spring-time. The fairies who presided at his birth showered on him a cornucopia of gifts—and one of their choicest was the gift of perpetual youth. "Whenever you die, William," said Lady Stanley to her brother, "you will die young." To say the same of Sir Jamshedji would only be to err on the side of restraint. If a man is as old as he feels, Sir Jamshedji ought to be still at school.

He has a mind that cuts its way as instantly and easily to the very core of a problem as a hot knife through butter. He thinks in a lightning flash—a flash that illumines the inmost recesses of the case. In quickness of grasp, he has no superior among the legal brains of this country. Before you state your case he has seen the point of it, and before you see the point he has decided it. In court and in conference he is always a mile ahead of all others. He waits for you to arrive and when you at last catch up with him, you find that he has already surveyed the whole area and chosen and lighted the best paths.

The law is the element he has lived in for forty-two years, taking the judgeship and the advocate-generalship in his stride. In his love of the law he is the first cousin to the great English lawyer, who, after he had fainted, was brought back to

consciousness by the smell of an old volume of law-reports held against his nose by a ready-witted "learned friend."

Sir Jamshedji is saturated with law and has assimilated it to his finger-tips. But the law is not the only good thing he has found on this green earth. His keen beaming face reveals that he is still absorbed in the joy and wonder of living.

His memory is phenomenal—some mysterious method of mental card-indexing enables him to recall any case on the instant. The facts of the many briefs before him are carefully stowed away in the innumerable drawers of his memory, and he can shut one drawer and open another within a second without the slightest confusion.

He has intellect enough to succeed without industry and industry enough to succeed without intellect. The combination has carried all before him.

There is no more lovable figure at the Bombay Bar today. The reason is not far to seek. Sunshine is always playing round his heart, and one loves to bask in the sunshine.

M. C. Chagla — a great judge

(On his relinquishing the Chief Justiceship of the Bombay High Court in October 1958)

Justice Cardozo said that the work of a judge was in one sense enduring and in another sense ephemeral. What is good in it endures, what is erroneous is pretty sure to perish. The good remains the foundation on which new structures will be built. The bad will be rejected and cast off in the laboratory of years.

There is an immeasurable amount of good in Chief Justice Chagla's long series of judgments, the last of which was delivered a few days ago. They bear the impress of a great and cultured mind — quick in perception, broad in vision, fresh in approach. Justice Chagla knew that reported cases were only "the small change of legal thought." The enduring currency is that of first principles, and he liked to rest his judgments on them. He was at his best in dealing with cases where analogies are equivocal and precedents are silent.

The law was to him no lifeless conglomeration of sections and decisions. He illumined justice and humanized the law. He achieved the incredible and humanized even the tax laws.

It is a trite saying that tax and equity are strangers, but he demonstrated that they need not be sworn enemies. His contribution to the growth of income-tax law is perhaps the most monumental contribution ever made by any individual judge. Even Justice Rowlatt's work did not cover so wide a field or open up so many fresh avenues for the growth of the law.

His one burning desire was to do real justice. In achieving that aim, he brushed aside the conservatism which fails to conserve and which nurtures the form at the expense of the substance. He went straight for the jugular vein of every matter which came before him, — "the hub of the case". His judgments had no dark nooks or misty crannies.

Daniel Webster used to say that "the power of clear statement is the great power at the Bar." It is also the great power on the Bench, and Justice Chagla had it in a pre-eminent degree. He wrote his judgments even as the grass grows — effortlessly,

spontaneously. They are tinged with the essential characteristics of his own personality—sweetness and light.

His report in the Life Insurance Corporation Inquiry case is a landmark in the history of public life in this country and bears testimony to his fearless and high-minded nature and his shrewd appraisal of men and human affairs.

To the Romans, Justice was a goddess whose symbols were—a throne that tempests could not shake, a pulse that passion could not stir, eyes that were blind to any feeling of favour or ill-will, and the sword that fell on all offenders with equal certainty and with impartial strength. This goddess brooded over the Chief Justice's Court. But her stern features relented into a compassionate smile and the language of the statute was sometimes subjected to severe strain when one of the parties before the Court was of the humble and lowly class.

His incredible open-mindedness has passed into a byword. No case was ever lost or won before him till the last word was spoken. His first impressions, his tentative views, were never tenaciously held; he did not allow them to obstruct the light streaming in from even the juniormost member of the Bar.

The man was as great as the judge. For years and years to come, memory will relive the day gone by, and the counsel who had the privilege of appearing before him and others who came in contact with him will recollect with nostalgic pleasure his unfailing courtesy and his innate graciousness.

The country paid him great honours and gave him historic assignments, but at all times he remained the gentle, modest, affectionate man. There are few persons whom the following lines of James Russell Lowell fit better:

"His magic was not far to seek, —
He was so human! Whether strong or weak
Far from his kind he neither sank nor soared,
But sat an equal guest at every board.
No beggar ever felt him condescend,
No prince presume; for still himself he bore,
At manhood's simple level, and where'er
He met a stranger, there he left a friend."

Roses in December

(Review of the Autobiography of M. C. Chagla, *The Times of India,* November 11, 1973)

Most readers may be familiar with some facets of M. C. Chagla's many-splendoured life, but, after reading this fascinating autobiography, they will be amazed to see how many parts a consummate player on the stage of the world can in his time play. And for this alone, if for nothing else, his tale should be told. The book reflects the author who is the soul of urbanity and graciousness, combining culture with a wide-ranging mind.

The story starts with the solemn, sensitive, hard-working boy, quick to learn and wise to know. The green, cloistered student goes to Oxford and there enriches his mind and widens his horizons. As the president of the Indian Majlis, he trains himself in the art of public speaking in which he is to have few peers in later life.

Then come the years of waiting at the Bar to which many are called but few are chosen. The pen-portraits of the luminaries, some of whom have already become legends, make absorbing reading. When Chagla chooses to fill in the details, perfect cameos emerge and the past comes back to life. You hear the growl of Inverarity when disturbed at bridge; you see Jinnah, upright and emotionless, subsisting on a thin intellectual diet of law and politics; the towering personality, in more senses than one, of Sir Jamshedji Kanga with his sure and enormous knowledge; and the born lawyer Bhulabhai Desai with his matchless eloquence. The book is strewn with memorable and amusing anecdotes which would otherwise have been sadly lost to history.

Chagla spent nineteen years at the Bar of which the first seven were so difficult that the spectre of starvation brooded over the household. Those years left their indelible mark on the spirit which was already over-sensitive and could have done without the catharsis of prolonged adversity. They, no doubt, moulded the personality of the future judge who did not hesitate to tilt the scales, whenever necessary, for the benefit of the poor.

There are historic flashes from the arena of politics. The onetime close colleague of Jinnah parts from him on the issue of national unity; and the breach is never healed.

Three passions, overpowering and enduring, seem to have dominated Chagla's life: adherence to nationalism, involving the integration of all communities and predicating a unity among all citizens; love of the basic human freedoms, rooted in the perception that liberty is distinct and different from democracy; and devotion to justice between man and man and between man and the State.

The two chapters of the autobiography which deal with Chagla's judicial tenure are of particular interest, since his most outstanding contribution to the life of the nation has been as a judge. After he had been a puisne judge for six years, Bombay had eleven luminous and priceless years when he presided over its High Court as the Chief Justice. If one takes all relevant points into account, one must conclude, as Sir Jamshedji Kanga did with his six decades of experience at the Bar, that Chagla made probably the finest Indian judge of this century. Certainly no judge displayed a better combination of intellect and open-mindedness, courtesy and humility, integrity and fairness.

Chagla's correspondence with Morarji Desai in 1950 deserves to live in history as the high-water mark of sturdy judicial independence. Refusing to be a docile and tractable Chief Justice, and resenting the executive's attempt to make him toe the government line, Chagla wrote to the then Chief Minister, "I love my country with the same intensity and fervour as anyone else. And I am seeing tendencies which if not checked will lead us to unbridled dictatorship. You and I don't count. Our vanity, our *amour-propre,* our sensitiveness, are nothing compared to the future destiny of our people. In Heaven's name let us not do anything which may deflect that destiny into channels unworthy of a great nation."

After 1947 the scenes shift rapidly. Honours and glittering assignments come fast and thick one upon another. Few men have played as many roles with so much credit and such aplomb. The book contains most readable vignettes of his days as vice-chancellor, as ambassador and high commissioner, as

governor, as judge of the International Court at The Hague and as member of the Central Cabinet. The last high public office was surrendered in 1967 when, with his characteristic dedication to high principles, he resigned from the Cabinet in protest against a parochial policy in education dictated by linguistic fanaticism.

The last chapter entitled "Personal" is deeply touching. The crowded hours of glorious life have been gathered to the past. Those were great memories, but he lays them down; and we are given a glimpse of the affectionate soul lost in loneliness, resuming legal practice in Delhi as an anodyne to alleviate "the solitary pain that gnaws the heart". One wonders why a person so richly endowed should voluntarily choose to spend the evening of life in the stony court-rooms of a city where he does not feel at home.

The book will survive not merely for the cavalcade of personalities that cross the stage, from royalty and rulers to the humble and unknown. It will be remembered and read when the current controversies recede into history, for it is the story of a generous and lovable man for whom humanity is not a witless word and integrity is not an idealistic dream. The roses will remain fragrant for many a December.

Chief Justice J. C. Shah

(On his retirement as the Chief Justice of India, January 22, 1971)

There is a dust that follows the flying feet of the years, which prevents men from seeing clearly the happenings close at hand. When the history of our benighted times comes to be written, it will be plainly perceived that the Supreme Court of India was the one institution which served the nation most meritoriously in its hour of need. If freedom under law survives in India today, it is only because of the fundamental rights in our Constitution and the outstanding independence of our Courts.

Chief Justice Jayantilal Chhotalal Shah ranks very high among the exemplars of the Supreme Court's wisdom and sturdy independence.

Today, very few people are conscious of the fact that the major constitutional cases which Shah decided are those which helped to preserve and maintain, in the ultimate analysis, the rights of the common man against the lawless instincts of men in power.

A typical instance is the Supreme Court's judgment in the *Bank Nationalization* case[1], which is very much the victory of the common man. It struck down the law nationalizing banks without payment of what the law would regard as "compensation". Excluding the shares held by government-owned corporations, ninety per cent of the remaining share capitals of almost all the nationalized banks were held by hundreds of thousands of middle-class citizens whose hard-earned savings were invested in the banks; and the entire body of investors benefited by the judgment[2]. That decision further vindicated the ordinary citizen's right to assert that every law,

[1] *R. C. Cooper* v *Union of India* A.I.R. 1970 S.C. 564.

[2] Total or partial confiscation is now authorized by the Twenty-fifth Amendment which was brought in to supersede the Supreme Court's decision.

whatever its object or subject-matter, must respect and conform to every fundamental right. For instance, the common man's right to personal liberty and his protection against arrest and detention are not merely guaranteed by arts. 21 and 22, but he is entitled, as a result of that judgment, to challenge any preventive detention law on the ground that the procedure established under that law does not constitute a reasonable restriction in the public interest on his fundamental right to freedom of movement guaranteed by art. 19(1)(d).

The significance of the judgment of the Supreme Court in the *Privy Purse* case[3] is not so much for the Maharaja as for the common man. The basic issues involved in the case were not concerned with privileges or privy purses, with the booming of salute guns or the clinking of shekels. The basic issues centred round the sanctity of the Constitution and public morality. The President of India had, by an executive fiat, derecognized the Rulers, although the Constitution, with its recognition of Rulership and its most solemn guarantee of privy purses to the Rulers, remained unamended. Could the Constitution be silenced and its mandate sacrificed at the altar of political expediency? If privy purses could be stopped by mere executive action, the most unsafe investment in the world would be the securities of the Indian Government in which the funds of charities and trusts for widows and orphans, and provident funds of millions of workers, are invested. If privy purses could be repudiated, so could the Government's obligation to pay the principal and the interest in respect of Government paper, because the Constitution used exactly the same words in guaranteeing privy purses as for guaranteeing the Government's obligation in respect of securities (arts. 112(3) and 291). What was at stake was nothing less than the nation's honour and its reputation for financial integrity in the eyes of the world.

In an age which applauds the vice of bias as the virtue of "commitment", Shah was committed to nothing but right and justice. Under art. 124(6) of the Constitution read with the Third Schedule, a Judge of the Supreme Court, before he

[3] *Madhav Rao* v *Union of India* A.I.R. 1971 S.C. 530.

enters upon his office, has to take an oath that he "will bear true faith and allegiance to the Constitution of India . . . and . . . will uphold the Constitution and the laws". During the *Bank Nationalization* case, when a communist lawyer had the impertinence to suggest, in the course of his arguments, that if the Supreme Court decided the case against the Government, the Court would lose the respect of the people, Shah, who was the presiding Judge, said, "No consideration of popularity can weigh with us. We took an oath when we assumed office and we propose to be true to our oath."

Detachment and intellectual integrity have characterized the entire judicial career of Shah on the Bench of the Bombay High Court from 1949 to 1959 and thenceforward in the Supreme Court.

His quickness of perception and his rate of disposal of cases were truly remarkable. So keen was his legal acumen that, however vast the record, he promptly reached the focal point of the case. He liked to tread the main highway of the basic issues before the Court, and could always resist the temptation to enter the scholarly side-walks and the historic by-lanes.

There are no purple patches in his judgments which are enormous in number. They are distinguished by logic and balance, precision and simplicity, not flowers or tears. In the fine phrase of R. L. Stevenson, he was always faithful to "the piety of speech".

Shah's most enduring contribution is towards upholding the sanctity of the Constitution. In his last momentous judgment in the *Privy Purse* case he observed:

> "...The foundation of our Constitution is firmly laid in the rule of law, and no instrumentality of the Union, not even the President as the head of the executive, is invested with arbitrary authority."

He has left a mark on constitutional law, which will have a great significance for the future of our nascent democracy.

Dean Pound said, "Perhaps the most significant advance in the modern science of law is the change from the analytical to the functional attitude." In a string of decisions Shah brought about the growth of income-tax law and sales-tax law

through the judicial process. He remoulded case law and evolved principles to attain the ends which fiscal laws are meant to serve. It would not be too much to say that Shah tempered the predatory instincts of the State with justice and fairness.

Nothing is more alien to Justice Shah's nature than a sense of self-importance, or a desire for self-advertisement, or a yen for self-advancement. His unfailing courtesy and amiable manners made all counsel feel at home in his Court, despite the exceptionally swift despatch of their cases. The Supreme Court is the poorer for his retirement.

Salute to Justice Khanna

(*Indian Express,* **Sunday Edition, January 30, 1977**)

In *Kesavananda Bharati's* case*, seven judges who constituted the majority of the Supreme Court held that while Parliament is entitled to abridge any fundamental right or amend any provision of the Constitution in the exercise of its amending power, it cannot alter or destroy the basic structure or framework of the Constitution.

Of those seven judges, Chief Justice S. M. Sikri retired on April 25, 1973—a day after delivering the judgment. Justices J. M. Shelat, K. S. Hegde and A. N. Grover resigned upon being superseded for the office of the Chief Justice of India. Justice A. K. Mukherjea died. Justice Jaganmohan Reddy retired in normal course. The last continuing judge of the seven who held that the Constitution cannot be made to suffer a loss of identity through the amending process was Justice H. R. Khanna. And he resigned last Friday when he, the seniormost of the Supreme Court puisne judges, was passed over for the Chief Justiceship.

The official reason given for the supersession is that he would have been the Chief Justice for five months only.

With the exception of lawyers who are involved in politics, there is a unanimous view among members of the Bar that Justice Khanna should not have been superseded and that he has been made to pay the price for his independence and intellectual integrity. H. R. Khanna combines these qualities with great perspicacity and modesty, remarkable dignity and gracious manners.

Was the length of time for which he would have held the office of the Chief Justice sufficient to disqualify such an exceptionally good judge for the highest judicial office? One of the most eminent of our Chief Justices—J. C. Shah—was appointed to this office although he was to hold it for only a month and a half.

When the Law Commission recommended that irrespective of seniority "the most suitable person" should be chosen the

* A.I.R. 1973 S.C. 1461.

Chief Justice of India, they did not mean suitability from the viewpoint of the executive. Their recommendation is in the following words:

> "For the performance of the duties of Chief Justice of India, there is needed, not only a judge of ability and experience, but also a competent administrator capable of handling complex matters that may arise from time to time, a shrewd judge of men and personalities and, above all, a person of sturdy independence and towering personality who would, on the occasion arising, be a watch-dog of the independence of the judiciary . . . In our view therefore, the filling of a vacancy in the office of the Chief Justice of India should be approached with paramount regard to the considerations we have mentioned above. It may be that the seniormost puisne judge fulfils these requirements. If so, there could be no objection to his being appointed to fill the office."

If the qualities needed, according to the Law Commission, in the Chief Justice were to be the real criteria, there was the strongest possible case for not superseding H. R. Khanna. He yielded to none in "sturdy independence" and in his capacity to act as the "watch-dog of the independence of the judiciary." As regards administrative experience, Khanna had already served with great distinction as the Chief Justice of the Delhi High Court.

Can it possibly be suggested that all the excellent qualities of Khanna as a judge were outweighed by the single factor of the shortness of tenure as Chief Justice? It is necessary to give the most serious consideration to the question whether a more satisfactory machinery should not be devised for the choice of the Chief Justice and judges of the Supreme Court than the mere whim or will of the executive.

Khanna's independence and judicial integrity are exemplified in his judgment in the habeas corpus case*, decided by a five-judge Bench of the Supreme Court last April, in which he was the sole dissenter. The majority held that upon the suspension

* *A.D.M., Jabalpur* v *Shukla* A.I.R. 1976 S.C. 1207.

of fundamental rights, a detenu cannot ask for a writ of habeas corpus or any other order from the court even if he is able to show that his detention is illegal or *mala fide* or is not authorized under the very law under which he is sought to be detained.

Justice Khanna rejected this view, and held that the suspension of fundamental rights puts the Indian citizen in no worse position than the citizen of the United Kingdom where there are no guaranteed fundamental rights or the citizen of British India before Independence, and that an illegal or *mala fide* order of detention can always be challenged in a court of law, even during times of Emergency.

The key to his judgment is in his opening words: "The law of preventive detention, of detention without trial, is anathema to all those who love personal liberty. Such a law makes deep inroads into basic human freedoms which we all cherish and which occupy prime position among the higher values of life."

He further held that even in the absence of fundamental rights, "the State has got no power to deprive a person of his life or personal liberty without the authority of law. That is the essential postulate and basic assumption of the rule of law in every civilized society."

In deciding the habeas corpus matter as he did, H. R. Khanna played a memorable role at the most critical juncture in our history. Generations unborn will admire his historic judgment as a shining example of judicial integrity and courage and cherish it for the abiding values it embodies.

No patriot can have a dearer wish for India than that Khanna's judgment in the detention cases may become, in his own lifetime, the law of the land. To borrow the words of Chief Justice Hughes, Khanna's dissent is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision will "correct the error into which the dissenting judge believes the court to have been betrayed."

The two indispensable bulwarks of a democracy are a free press and an independent judiciary. Justice Frankfurter said:

> "The court has no reason for existence if it merely reflects the pressures of the day. Our system is built on the faith that men set apart for this special function, freed from the

influences of immediacy and from the deflections of worldly ambition, will become able to take a view of longer range than the period of responsibility entrusted to Congress and Legislatures."

The judge who, only a few months before the question of his appointment to head the highest court was to arise, ruled in favour of the citizen detained without a charge, without a trial, and without even the authority of any law, was certainly not deflected by worldly ambition.

So long as there is a judiciary marked by rugged independence, the citizen's civil liberties are safe even in the absence of any cast-iron guarantees in the Constitution. But once the judiciary becomes subservient to the executive and to the philosophy of the party for the time being in power, no enumeration of fundamental rights in the Constitution can be of any avail to the citizen, because the courts of justice would then be replaced by the government's courts. "If the salt have lost his savour, wherewith shall it be salted?" In the last analysis, the final guarantee of the citizen's rights is the personality and intellectual integrity of our Supreme Court judges.

While H. R. Khanna's supersession must cause widespread public distress, for him personally "nothing is here for tears, nothing to wail or knock the breast." Milton received ten pounds in all for *Paradise Lost,* and Mark Pattison's comment was: "Surely it is better so; better to know that the noblest monument of English letters had no money value, than to think of it as having been paid for at a pound the line." It is better to know that there are still judges in our midst who are true to the light within them, than to think of Khanna as having attained the highest worldly fulfilment of his judicial career.

"God give us Men! A time like this demands
Strong minds, great hearts, true faith and ready hands;
Men whom the lust of office does not kill;
Men whom the spoils of office cannot buy;
Men who possess opinions and a will;
Men who have honour; Men who will not lie;
Men who can stand before a demagogue
And damn his treacherous flatteries without winking!

Tall Men, sun-crowned, who live above the fog
In public duty and in private thinking."

H. R. Khanna has the priceless inner satisfaction of feeling that he has lived above the fog in public duty and in private thinking. When he pronounced his glorious dissent in the habeas corpus case, *The New York Times* remarked that surely a statue would be erected to him some day in an Indian city. His real monuments are his rulings upholding the basic structure of the Constitution and the citizen's rights to his life and personal liberty. To the stature of such a judge, the Chief Justiceship of India could have added nothing.

A remarkable school teacher

(A tribute, published in September 1948, to my teacher, Nusserwanji P. Pavri, who taught for almost half a century in High Schools in Bombay)

Sometimes of an evening you might chance to see a frail-looking man, short and short-sighted, in a black coat and with a prodigious head, walking along the Oval pathway. He is a nation builder,—he has helped to educate two generations. He must still be coming back into the memory of thousands who have forgotten all that they set out to learn at school.

Life has not given Nusserwanji P. Pavri his meed of reward, but that has not dulled the edge of his cheerful debonair spirit. He evidently believes that Dante was right in condemning to the Stygian marsh those who had been sad under the blessed sunlight. With all his sure and enormous erudition, he is Modesty in person. He has not produced any book. The result of his labour is not so many hundred pages, but himself. The issue of his sustained mental effort is not a volume but a man; it could not be embodied in print, it consists in the living word.

Nusserwanji is a quiet man, not to be easily ruffled or rattled. Patience is an instinct with him. He has the simplicity of the man in Dostoevsky's *Brothers Karamazov* who used to ask the birds to forgive him.

He brought the human touch into his lessons,—it was always a lesson and never a lecture. When Nusserwanji taught history, facts were brought to life, the dry bones of history stirred, the ages began to masquerade. He conjured up before you the fog at Lutzen and the snow at Towton, the shower of rain that led to the American Revolution, and the severe winter of 1788 that produced the famine of 1789 and thereby the French upheaval. You saw Brutus, the norm of republican virtue, extorting 48 per cent interest from a wretched Cypriote community; you saw the lights burning low in the skies and the stage darkened in the Middle Ages; you heard the din of toppling thrones and the crashing of empires during the first world conflagration.

And never did his vision dim, his grasp weaken, or his memory fail.

His learning does not consist merely in the possession of a stock of facts — the merit of a dictionary — but in the discerning spirit, in the power of appreciation and of comparative criticism. Knowledge is to Nusserwanji the bread of life. He reads as if he were to live forever, even as he lives as if he were to die the next day. He inoculated his students with his own thirst for knowledge. He was a precisian and a martinet in discipline. To him knowledge could no more be acquired without high seriousness than a symphony could be rendered upon the flute.

Punctuality was with him a passion. You could set your watch, correct to half a minute, by the time he came into the class. His private library was at the disposal of all his pupils, and so were his time and his learning. There never was a man more generous in encouragement or gentler in reproach. By personal contact with him you not only learnt something, you became something. Contact with him moulded your character and taught you, in the most impressionable years of your life, to beware of ideas half-hatched and convictions reared by accident. Only a thoroughly good man could be so great a teacher as Nusserwanji indubitably was.

He was unerring in his acumen to scent the latent ability in a student. In that great tempest of terror which swept over France in 1793, a certain man who was every hour expecting to be led off to the guillotine, uttered this memorable sentiment: "Even at this incomprehensible moment, when morality, enlightenment, love of country, all of them only make death at the prison-door or on the scaffold more certain, — yes, on the fatal tumbril itself, with nothing free but my voice, I could still cry *Take care* to a child that should come too near the wheel; perhaps I may save his life, perhaps he may one day save his country." Nusserwanji had this large and inspiring belief in the potentialities of a boy. He was personally and vitally interested in the progress and career of all his pupils.

Many other things could be related about Nusserwanji from the wide-leaved book of memories. The associations of travel

fade, the incidents of life press so closely one upon another that each in turn is trampled under foot, but one's associations with a teacher like Nusserwanji remain forever unchanged. He has now retired but the energy of his educational service remains. This soothing thought must have opened a larger meaning and a higher purpose to his daily work. His personal influence has not fallen silent. His pupils will long feel the presence of his character about them, making them ashamed of what is indolent or selfish and encouraging them to all disinterested labour both in trying to do good and in trying to find out what the good is.

16

AN AMBASSADOR IN WASHINGTON (1977-79)

The human cycle

(Remarks when presenting Credentials to President Carter, October 7, 1977)

MR. PRESIDENT, the United States and India are indentured to the same ideals and aspirations .... The founding fathers of our Constitution drew largely upon your fundamental law. Liberty—the Eternal Flame—lights our Constitution as luminously as it does yours.

In the human cycle, years—sometimes centuries—pass like a wayward time, and then comes a moment marked by the growing consciousness that an era is emerging and that man is moving in a new direction towards a new life. Humanity is today in that transforming mood. It is restlessly groping its way to the unity of the human race which postulates that the United Nations be united. Recent events bear witness to the shaping and moulding of a new world order marked by a rising awareness of the need for justice and moral values. Robert Lowell referred to "the tranquillized Fifties". We may look forward, with justified optimism, to the humanized Eighties.

A mistake of symbolic significance

(Address to the Massachusetts State Legislature, April 5, 1978)

I regard it as a singular privilege to have the opportunity of addressing the Legislature of the Commonwealth of Massachusetts. This State was founded by the British in the 17th century at about the same time that they came to India. The men who came here sought to put into practice their ideas of freedom of religion and self-government. This State has been the originator of transforming thought in the fields of science and the humanities, education and politics, industry and finance. At critical junctures in the history of the United States, Massachusetts has given the nation great leadership, imbued with vision and understanding, with knowledge and dedication. Verily, it has shaped and moulded the American consciousness.

I have the honour to represent a country which shares the values which have been cherished and nurtured in this beautiful State over three centuries. It has been the glorious destiny of Massachusetts to play an unforgettable role in the evolution and preservation of human freedoms. The greatest tie between your State and India consists in the fact that India shares your ideals and your passionate devotion to the cause of freedom.

The bond between the world's most powerful democracy and the world's most populous democracy is so deep and enduring that while Columbus obviously made a mistake in thinking that he had discovered India when he landed on the shores of America, it was a mistake of symbolic significance.

Indo-U.S. relations

(Woodrow Wilson International Center, Washington, D.C., May 19, 1978)

While the peoples of India and the United States have always had sentiments of friendship and goodwill towards each other, the governments of the two countries a few years ago found it difficult to be on the same wave length. In fact, earlier in the decade, the warmth of feeling between the two governments was such that it could have frozen both the Ganges and the Mississippi.

The United States and India are the antipodes from the viewpoint of geography and economics. But their common destiny is to be the standard-bearers of liberty, and in this context India is to the Third World what the United States is to the First.

India's present policy of genuine nonalignment has made it as friendly with the United States as it is with the Soviet Union. Nonalignment, by definition, means the absence of a tilt. But some countries, during certain periods, have followed a policy of nonalignment which was as conspicuous for the absence of a tilt as the Leaning Tower of Pisa.

By no means the least important are the cultural relations between the two countries. Indian culture and American culture are complementary and supplementary to each other. You need American culture to have a standard of living; you need Indian culture to have a standard of life.

There can be no quantitative score-card of the enrichment of relations between the two countries, since such enrichment is not to be measured in material terms. It is worth remembering that the relations between the two countries were at the lowest ebb in 1974, although that was the year when the United States wrote off a cheque for over $2 billion by way of relinquishment of the PL 480 debt owed by India—the largest amount paid by a single cheque in the history of banking as noted in the *Guinness Book of World Records.*

As between individuals, so between nations, the true bond consists in an affinity which transcends all monetary considerations.

Galaxy of Indian talent in the United States

(On June 26, 1979, at a Banquet in Washington, D.C., 14 outstanding men of Indian origin were honoured — Dr. Raj Chandra Bose, Dr. Harish-Chandra, Dr. Subrahmanyan Chandrasekhar, Dr. H. Gobind Khorana, Maestro Zubin Mehta, Dr. Satyabrata Nandi, Dr. C. K. N. Patel, Prof. Raja Rao, Prof. A. K. Ramanujan, Dr. Rustum Roy, Dr. Kundan S. Singwi, Dr. S. Subramanian, Dr. E. C. G. Sudarshan, Dr. Manik Talwani. All of them were present, except two who were outside the United States on that day.)

A nation's greatest and most renewable resource is its human resource. A people's or a corporation's most precious assets are those which never appear in any budget or balance sheet —its brains.

India is poor in economic terms, but rich in intellect, skills and the spirit of enterprise. Beyond question the largest concentration of outstanding Indian talent outside India is in the United States. This is not surprising. Heads go where hearts go — they go where they feel they are wanted. The environment and opportunities in the United States have resulted in this country attracting and holding the largest pool of scientific and artistic creativity.

This is perhaps the first function of its type to be held by an Indian Mission abroad. The decision to honour the galaxy of Indian talent in this country is long overdue. The number of such Indians with outstanding achievements to their credit is large, and we had, inevitably, to restrict the choice of the honourees to a very few.

Thirteen out of the fourteen honourees will receive a plaque inscribed as in the following specimen:

Dr. S. Chandrasekhar
Exemplar of Excellence
and Explorer of Brahma

With esteem and affection
from the people of India
who rejoice in his
outstanding achievements

In the case of Zubin Mehta the only change is that the first two lines after his name run thus:—

The Maestro who reaches out
to Brahma through music

A word about Brahma which is the Ultimate Reality. Thousands of years ago the intuitive seers of India understood that Brahma is far, far beyond what we perceive through our five senses. Ancient insights knew what modern discoveries are now laying bare—that boundary lines vanish and points of contact emerge between the realms of the living and the non-living, that inorganic matter is anything but inert, that the rudest sod is thrilled with fire of hidden day and haunted by all mystery. Turn but a stone and you start a wing. In Brahma what Lord Snow called the Two Cultures are synthesized, science becomes indistinguishable from art and the atom from the infinite. The Unified Theory for which Einstein searched so long is but one of the billion facets of Brahma. We are left, in the words of Sir James Jeans, with the awesome feeling that the universe is more like a great thought than like a great machine.

These fourteen Indians have, each in his own way, joined in the eternal quest for Brahma—endless seeking after endless truth. Verily, they have enriched human life and brought honour to the land which gave them birth.

An appeal to Indians abroad

**(Association of Indians in America,
New York, June 15, 1978)**

From time to time you must be reading distressing news about the troubles and problems facing India. I do hope you will look at the difficulties of your motherland in the right perspective.

Countries with only two languages find it difficult to hold together; while India has 15 major languages and 250 dialects, and those major languages are written in different alphabets, being derived from different sources and representing entirely different civilizations which flourished in India over the last 5,000 years. In these circumstances, it is not surprising that dissensions and differences should persist; in fact, it would be a miracle if they did not.

In the great nation-building task which faces India today, persons of Indian origin living abroad can play a tremendous role. I was proud and happy to find that a large number of Indians in the United States who are well-settled and would not like to change their domicile, are still willing to give a slice of their life to their motherland. They are willing to spend a month or two periodically in India when they can make a gift of their knowledge, research and expertise to their countrymen. The gift of knowledge is the greatest gift a human being can confer upon his fellowmen.

What is needed from Indians here is not contributions in money, but contributions in time, thought and work. India needs no financial commitments from her sons abroad, but personal commitments involving a part of their lives and their labours.

Among the various ways in which Indians settled here can help India are the following:

(*i*) A group of Indians may choose to adopt a village and give it the benefit of their time and knowledge, or individuals may seek to upgrade the place where they

were born or educated or any other locale of their choice.

(*ii*) The thousands of Indian professionals who are very weli established here may choose to favour appropriate institutions in India which could profit greatly from their expertise or advanced technology. Private initiative on the part of my countrymen here would be the best initiator of, and the finest motive force behind, such a scheme. The Indian Embassy can help by maintaining a list of the institutions in India which can be contacted by physicians, surgeons, scientists, engineers and a variety of other technocrats who would like to do some good to their fellow countrymen.

(*iii*) An institution may be founded which can channelize some of the public-spirited activities. The foundation can arrange for exchanges of personnel—Indians going from here to India in the cause of national service, and persons coming here from India to acquire higher knowledge.

I know that in carrying out any of the above three alternatives or any other scheme, there are bound to be pinpricks and irritations, bureaucratic bunglings, and lackadaisicalness which is so characteristic of all governments. But the choice is between overcoming such obstacles and helping India to fulfil her great destiny on one hand, and on the other hand living for oneself without the satisfaction of doing any constructive work for our less fortunate brethren.

My experiences as an Ambassador

**(Indian Council of World Affairs,
Bombay, December 28, 1978)**

I am lucky enough to be able to come back alive (on a brief holiday) to report my experiences as an emissary to a foreign country. My forerunners in the diplomatic profession, as history records, did not always have the pleasure of returning to their motherland. In the early stages of history when human beings were cannibals, a tribe would send an emissary to another tribe with which it was at war. Frequently the emissary was unable to deliver the message, because he was eaten before he could deliver it. With the passage of time there was an improvement and the message was first allowed to be communicated before the envoy was eaten. But this was not much of an improvement from the viewpoint of the envoy himself.

The qualifications which are today considered essential in a diplomat are different from those which prevailed in earlier times. The mother of Empress Catherine of Russia advised Frederick the Great to choose as his Ambassador to St. Petersburg a handsome young man with a good complexion; while a capacity for absorbing large quantities of intoxicating liquor was considered to be a qualification for an envoy to Holland or the German Courts. If such an ambassador had been recounting his experiences to you, I am sure you would find them much more interesting. But I am afraid, having regard to our mores and our prohibition policy, you will have to be content with such dry experiences as I am in a position to recount faithfully.

It has been my great good luck to have the honour of representing India in the United States in the crucial year 1978. Since the end of the Second World War in 1945, no other year has been packed with so much historical significance as the year 1978. It witnessed a powerful move in China towards liberalization, and also the Sino-Japan Treaty, and the U.S.-China Joint Communique under which the Government of the

mainland of China has been recognized and the Government of Taiwan de-recognized by the United States. History alone can decide whether the U.S. played the China card or China played the U.S. card.

Going a little westwards, 1978 saw significant developments in the "valuable and vulnerable triangle" formed by Kabul, Ankara and Addis Ababa. It saw Afghanistan, Iran and Turkey go through political developments which are likely to change the course of history in the whole region. 1978 was also the year of the Camp David Summit which, while it failed to bring about a peace treaty, at least brought about peace, between Egypt and Israel. The year was marked by changes of great moment in Angola, Ethiopia and Southern Africa. For good measure, it also witnessed the election of the first non-Italian Pope after 450 years, the first Pope ever from a communist country.

1978 was the year of President Carter's visit to India and Prime Minister Morarji Desai's visit to the United States—the trips that have done so much to consolidate friendship between the two democracies.

For the United States itself, 1978 has been a very significant year. One important event was the Panama Canal Treaty whereunder the United States voluntarily relinquished its sovereignty over the Canal. The year saw the distressing decline of the dollar, which resulted in the unassuming Indian rupee becoming a more stable currency in the world markets than the once almighty dollar. The fall of the dollar is a matter of deep concern for the whole world, because it is still true to some extent that if the United States sneezes the rest of the world catches pneumonia, such being the impact of the giant American economy on financial and industrial trends the world over. The other important domestic event in the United States was the revolt of taxpayers. Howard Jarvis who is 75 years old had been treated for the last 16 years as a right-wing nut who kept on crying in the wilderness for a cut in taxation. But in June last year, Jarvis had his hour of triumph. In the State of California he proposed what has now become world-famous as Proposition 13 which aimed at cutting property tax by 60 per cent. No less than two-thirds of the votes were cast in favour of that Proposition. Sixteen other States of the U.S.A.

have, on referendum and initiative, put the proposal for tax cut to vote, and 12 out of the 16 have voted in favour of drastic tax cuts. Jarvis's popular appeal lies in the growing consciousness that while death and taxes are inevitable, being taxed to death is not.

In the political life of India, 1978 confirmed Murphy's Law, "If anything can go wrong, it will", and exemplified Trotsky's remark about the bad luck of 20th century people who wish for quiet lives.

The United States and its citizens

I have been to 34 out of the 50 States which comprise the U.S.A. That country is so richly endowed by nature, and varied resources have been so prodigally gifted to it, that after coming here you almost cease to believe that there is justice in heaven. The country has almost three times the area of India and one-third of its population. By and large, the Americans are a very friendly and warm-hearted people and have a great sense of justice and fairness. It is America's basic friendliness which has made the 300,000 Indians who are settled there so happy and comfortable. Naturally, as in any other country, you do have cases of injustice perpetrated in America, but no one is more critical of such injustice than the Americans themselves. And the Americans are large-hearted to a fault. There is a great tradition in the United States of private giving for public purposes. Their universities are the richest in the world. The Americans support all institutions which aim at anything higher or nobler, either in theory or in practice. I have seen Indian ashrams* and yoga centres flourish in the United States to an extent unparalleled anywhere else.

The Americans have a wonderful sense of humour too. The politicians do not exhibit in public any sense of self-importance. In fact, they cannot afford to. They would be lacerated by the press if they start showing any sense of egoism. When I went to visit a Congressman in his Chambers on Capitol Hill, I found the walls of the ante-room covered with cartoons mercilessly making fun of himself. The legislators there can laugh at themselves and at one another. Congressmen never speak of

* Spiritual institutions or schools.

the Congress as supreme. They know that the Congress is a creature of the Constitution and it is only the Constitution that is supreme.

The United States is one colossal monument to the spirit of private initiative. Its pre-eminence is in the field of technology. Forty per cent of the world's research is carried out in the United States, and the rest of the world (including Great Britain, France, Germany and Japan) share the remaining 60 per cent. Ten years ago, as much as 60 per cent of the world's research was conducted in the United States. Every year $29 billion is spent on scientific research conducted by the government, the universities and the business houses. Sixty thousand to 70,000 patents are issued in the United States every year. What we in India have to learn is that in many areas technology does not reduce the number of jobs but merely reduces drudgery.

A typical example of the incredible strides made by technology is provided by the world-famous newspaper *Wall Street Journal.* At Palo Alto pages are set in type, then scanned by an optical scanner and converted into electronic impulses. The impulses are beamed out into space, at a rate of 300,000 bits of information per second, to a satellite which is 22,300 miles above the earth and whose speed of rotation synchronizes with that of the earth. The satellite's transmissions or signals are received in other cities. The whole process takes just three and a half minutes, and then ten minutes to convert the pages from film to metal. The paper is printed in a dozen different cities from the Atlantic to the Pacific.

Technology is, of course, not always to the good. I have delivered speeches in some buildings which did not have a single window; for example, the building of the City College in New York does not have a single aperture for letting light in. These buildings were constructed at a time when oil was cheap and having the building fully lighted and air-conditioned presented no financial problem. I asked the Dean at the City College what would happen if electricity failed and the building was plunged into darkness. He said that they would have to give the day off to the students.

Signs of intellectual ferment are writ large all over the United States. Forty-five thousand books are published in that country every year. This means that, leaving aside week-ends and holiday seasons, about 200 books are published per day. They range from utter trash to enduring contributions to human thought.

The national sport of the Americans is no longer football, baseball or basketball. It is law and litigation. There are 467,000 lawyers in the United States. The glut of lawyers is partly responsible for the fact that no less than seven million suits were filed last year—suits by all kinds of people for all kinds of redress. A former student is seeking $ 853,000 in damages from the University of Michigan, in part for the mental anguish he says he suffered after being given a "D" grade rather than the "A" he expected in an advanced German course. A young mother seeks $ 500,000 in damages from officials on Long Island for preventing her from breast-feeding her infant beside a community wading pool. A 24-year-old Colorado man is suing his parents for $ 350,000, charging that they gave him inhuman treatment and inadequate care as a child, making it impossible for him to fit into society as an adult. A 41-year-old California man, upset at a girl's failing to keep an appointment, unsuccessfully sued his would-be companion for $ 38 to compensate him for sprucing up and driving 40 miles for nothing. It was lawyers who encouraged malpractice suits, and now the lawyers are hoist with their own petard. According to a reasonable estimate, one lawyer out of every ten is either sued or threatened with a suit by his client for negligence or malpractice. A delightful cartoon showed a sorely tried father telling his recalcitrant child: "What? If I make you drink your milk, you'll SUE me?"

Some common problems of India and the United States

Essentially human frailties and weaknesses are the same the world over. Man is the same trousered ape, whether he is in Delhi or in Detroit, whether he trudges barefoot on dusty roads or flies at 600 miles an hour. Whichever degree of latitude or

longitude you traverse, and whether the man is in *dhoti** or in blue jeans, he is the same selfish, fallible creature with his irresistible impulse to put his personal or sectional interest above the national interest. No wonder the State has to control the anti-social impulses of its citizens.

Nothing proliferates so rapidly and so inexorably as bureaucracy; and an ever-growing civil service has become a major problem in the United States as it has in India. Dr. Moynihan, who was formerly the U.S. Ambassador to India, recently described the U.S. bureaucracy as "a pea-brained dinosaur". You find on many occasions that the bureaucracy in the United States, as in India, has more information than knowledge, more knowledge than wisdom, and more intelligence than imagination. Washington D.C. has been called "the malfunction junction"; and I can name another city which deserves the title equally well.

Having worked with government officials for more than a year I have no doubt that the government has at its disposal highly equipped manpower,—a larger pool of talent, expertise and dedication than the private sector or any other segment of society. But unfortunately there is something in the structure or system of a bureaucratic setup which prevents the highly gifted members of the civil service from giving their best to their country. Happy is the nation which can have civil servants without the bureaucracy!

President Harry Truman used to remark wryly that a President has to learn that he could give all the orders he pleased, but the Federal bureaucracy would not budge. When Jimmy Carter was campaigning for Presidentship in October 1976 he said that his Administration would provide "incentives to individuals who saved the government money". He was referring to a dedicated civil servant, Ernest Fitzgerald, who was discharged from service in 1969 after revealing $2 billion in cost overruns associated with the purchase of a certain plane by the Government. However, Fitzgerald, who sued successfully to get back his job as civilian cost-cutting expert for the Air Force, finds it difficult even now to succeed in his fresh endeavours to save the Government money. If the Fitzgerald case proves

* A loincloth worn by Hindu men.

anything, it is that Hyman Rickover was only too right when he said, "If you must sin, sin against God, not against the bureaucracy. God may forgive you, but the bureaucracy never will."

In the United States, as in India, you hear constant complaints about excessive regulation and control. A well researched recent article in *Newsweek* disclosed some mind-boggling facts. There are now no fewer than 87 Federal entities that regulate U.S. business, and to complete the 4,400 different forms they dispense requires 143 million man-hours of executive and clerical effort each year. The regulators are proposing so many new rules that the Federal Register has ballooned in size to nearly 70,000 pages annually. Companies complain that many of the rules are simply unnecessary. One agency often requests information already on file with another, and at times rulings of one regulator conflict with another's. The biggest complaint against regulation, however, is its sheer cost. Murray Weidenbaum of the Center for the Study of American Business at Washington University estimates the total annual bill at $103 billion. At General Motors, for example, more than 20,000 full-time employees work solely on government regulations. Hospitals are hard hit: in New York State, one-fourth of a patient's bill is attributed to the expense of satisfying rules of 164 government agencies. However, President Carter has succeeded in reducing federally mandated paperwork by 12 per cent.

Bureaucracy is the same the world over. Dr. Aziz Bindari blames the "catastrophic situation" in Egypt on the bureaucracy. "It's the country's fourth great pyramid. It guarantees societal inertia."

Among American politicians as among Indian politicians, there are some who are demagogues and some who make impossible promises to the electorate. In the elections held last November one of the candidates campaigning for a legislative seat promised that if he were elected he would establish schools that would produce "Beethovens and Einsteins". He did not realize that many parents would be quite content if their children learned to spell Beethoven correctly. Another politician successfully campaigned for the Governorship of Wisconsin

State on the slogan that the Federal Government at Washington has only three duties: "Deliver the mail, defend the shores, and get the hell out of my life."

Sometimes when you feel distressed that persons with a proven record of public wrong-doing are elected to our Parliament, you may derive some consolation from the fact that five members, who had been accused or convicted of mail fraud, misappropriation of government funds and other types of public wrong-doing, were re-elected to the U.S. Congress in the elections last November.

However, most of the persons in political life in the United States are hard-working and professionally qualified individuals who would be able to earn a comfortable living for themselves if they were not in politics. Quite a few of them are men of great ability and wide vision. And the other remarkable feature about American politics is that the majority of Governors and Congressmen are in their thirties or forties or early fifties.

Indians in America

There are 25 million people of Indian origin settled in different foreign countries, some of the most talented having chosen to make the U.S.A. their home. Outstanding Indian scientists expressed to me their willingness to come and work in India, even on a fraction of their large emoluments in the U.S.A., provided they would be allowed to work without political interference and bureaucratic control. We have been remiss in not showing due appreciation for the life-work of our great men who reside abroad. They, who have won world renown, should be invited here as State guests and publicly honoured. We have never done enough by way of grateful recognition for those who have brought lustre to our country.

At Austin in Texas State Dr. Swadesh Mahajan told me about brilliant Indian scientists working on the problem of fusion who are willing to come from the United States to work in India. Fusion will probably be the most important source of energy in the next century. Dr. Mahajan has already submitted a memorandum to the Government of India expressing his and his colleagues' willingness to pursue their research in

India under conditions of freedom. They are still awaiting a governmental reaction to their offer.

I have invincible faith in the long-term future of India. There is a close parallel between our history as a republic and the early history of the United States. We are only 29 years old as a republic. And we are going through experiences which the United States went through when it was in its twenties. In the United States the party which was in power and which had suppressed all criticism of the government called for elections in the year 1800. That party was swept out of office by the voters and a new party came to power which restored all the freedoms to the people. We had the same experience in 1977.

India is poor and illiterate. So was the United States in its twenties. The country which counted for little around 1800 triumphed over poverty and illiteracy and is today the most powerful nation on earth. With the genes of our people evolved over 5,000 years of civilization, we are capable of doing no less. All over the United States—from the Boeing workshop in Seattle to Texas Instruments in Dallas, to the Institute of Technology at Massachusetts—Indian talent is employed and the men in charge expressed to me their gratitude to India for giving them such remarkable human resources. Indian physicians, surgeons, scientists, engineers and professors in various disciplines have proved themselves to be as good as those coming from any other country.

Viewed from the right perspective, even our poverty can be harnessed as a tremendous driving force in fulfilling great national purposes. Let us not forget that while several civilizations have perished through affluence, no civilization has ever died of adversity.

Three conclusions

Many months' stay abroad has made me reach three basic conclusions.

First, the innate intelligence and inborn skills of Indians are so great that India can reach the top—if only we can have *education, organization* and *discipline.* It is no doubt a very

big "if". India has today the third largest force of scientists and engineers in the world, the first being the United States and the second the Soviet Union. We have this achievement to our credit while two-thirds of our people are still illiterate. Consider what will be the tremendous scientific and industrial strength of this country when education spreads and the populace becomes literate. What height can we not reach when the entire human potential of our country is deployed and each citizen recognizes his duty as a nation-builder!

It is organization which enables any enterprise or nation to put its talent and manpower to the maximum advantage. At the Cessna Aircraft factory at Wichita in Kansas State I met a couple of Indian technicians who have migrated after having been employed in the Hindustan Aeronautics factory at Bangalore. They told me that 10,000 workers are employed in the Cessna factory and they produce 5,000 planes a year; while 35,000 workers are employed in the Hindustan Aeronautics factory and they produce 100 planes a year; and that the level of talent and skill is as high at Bangalore as it is at Wichita and the plant at Bangalore is as good. The difference in output is largely due to the absence of competition at Bangalore and the absence of business organization of the type which prevails in first-class American corporations. Organization is the one facet of business management which is continuously kept under review in the United States. On an average, a significant organizational change takes place once in four years in dynamic U.S. corporations. Most enterprises in India have yet to learn the art and science of management.

The sad feature of the post-Emergency era is the lack of discipline. It is agonizing to read about the acts of violence after the rebirth of freedom. We need to be reminded again and again of the great saying of Mahatma Gandhi that non-violence is the law of human beings, even as violence is the law of the brute. Our fledgling democracy has had a very narrow escape. Let us not tempt the fates again. Good fortune may not come our way as it did in January 1977 when general elections were announced. It is the duty of each citizen not only to observe discipline himself but to inculcate it in the people around him. The citizens of Bombay will remember the visit of the Pope several years ago. There were crowds of more

than 100,000 people and yet how totally disciplined they were! Our Armed Forces are as disciplined as any in the world. This shows that we are as capable of total discipline as any other people but, as is demonstrated by the traffic on our roads, we have grown accustomed to a sloppy way of behaviour and accept it as a fact of Indian life. This acceptance of indiscipline is even more disastrous than indiscipline itself.

Secondly, we must eschew the fallacy that all problems can be solved by governmental action. It is this fallacy that makes people willingly countenance unlimited extension of State power which, as Mahatma Gandhi repeatedly observed, is fraught with incalculable mischief. The freedom of the subject is the silence of the laws.

Thirdly, as the late Dr. E. F. Schumacher pointed out in his posthumous book *A Guide for the Perplexed,* the western man has become rich in means and poor in ends. The ancient wisdom of India has steadfastly maintained that man's happiness is to move higher, to develop his highest faculties, to gain knowledge of the highest things and, if possible, to see God. The modern experiment of living without faith has failed. Goethe said, "Epochs of faith are epochs of fruitfulness; but epochs of unbelief, however glittering, are barren of all permanent good." The modern man, despite all his comforts and conveniences, is still perplexed. He cannot call home the heart to quietness, because his spirit is not in tune with the Infinite and he is troubled by

"The restless throbbings and burnings
That hope unsatisfied brings,
The weary longings and yearnings
For the mystical better things."

The greatest force in the world is love, and there has never been, and never will be, a substitute for it. From a failure to realize this elemental truth, stems the feeling of rootlessness and loneliness in modern society.

Dr. Schumacher's thesis is that one must develop the neglected art of learning to know oneself: "The cultivation of self-knowledge has fallen into virtually total neglect, except,

that is, where it is the object of active suppression. That you cannot love your neighbour unless you love yourself; that you cannot understand your neighbour unless you understand yourself; that there can be no knowledge of the 'invisible person' who is your neighbour except on the basis of self-knowledge—these fundamental truths have been forgotten even by many of the professionals in the established religions."

"We see all sights from pole to pole
And glance and nod and bustle by,
And never once possess our soul
Before we die."

In the case of every soul, however troubled, restoration can come only from within. This is the lesson taught by the great Indian sages, from the nameless ones who lived in the twilight of history to Sri Aurobindo. There is still hope for India, and for the world, if we relearn this lesson today.

Nuclear proliferation—horizontal and vertical

(Washington, D.C., 1979)

The war of nuclear creeds is being waged with the zeal and conviction characteristic of fighting faiths. Nuclear fundamentalism insists on power reactors conforming to standards of safety which, if generally applied, would forbid not only all other forms of power generation but also aviation, automobile transport, the manufacture of various heavy chemicals and innumerable other activities which are the hallmark of the modern age. After enjoying the benefits of nuclear generated electricity for two decades without a fatal accident anywhere in the world and after numerical studies have proved that nuclear reactors are safer than windmills, well-intentioned people still question the basic wisdom of putting the nuclear genie to work for peaceful purposes.

Dr. Herbert Inhaber of the Canadian Atomic Energy Control Board, recently studied the application of risk accounting to solar energy devices and to those power stations which derive their energy from coal, oil, natural gas, wind or uranium. Risk accounting involves attaching risk numbers to an energy machine such as a power station after taking into account all the risks associated with the production of a particular amount of energy, from the word go, *i.e.* starting with the procurement of the raw materials out of which the power station is made. Calculations on this basis put the various sources of energy in the following descending order of fatal hazard—coal, oil, wind, solar, uranium and natural gas, the total death risk in the case of a coal power station being a hundred times greater than in the case of a uranium reactor.[1]

The history of technology is the history of man's hostility to his own technological advances: the atomic revolution meets

[1] "Coming to Grips with Risk", *Wall Street Journal*, March 13, 1979. Similar views of some eminent British scientists are stated in "Nuclear power: advantages that outweigh the risks", *The Times* (of London), February 6, 1978.

today the same fate that greeted the industrial revolution almost two centuries ago. If the powerful anti-nuclear lobby had its way, it would ban all power reactors on the ground that they release small amounts of radioactive material which constitutes a hazard to mankind.

We must get reconciled to the fact that exposure to radiation is an inescapable hazard of living on the earth. The International Committee on Radiological Protection has determined that exposure to 500 millirems a year is within the safety limit. Without nuclear plants, the average American absorbs 250 millirems a year; with nuclear plants, he absorbs 250.003 millirems.[2] Unfortunately, ill-conceived belief, rather than well-informed reason, often permeates the nuclear debate: whether to have or be in proximity of a nuclear reactor has become a problem in comparative religion. It will be some years before mankind accepts the ineluctable consequences of its own achievement in the field of atomic energy and can be gently led away from nuclear theology to nuclear rationalism.

It is impossible to overestimate the dangers of, and the devastation resulting from, the use of atomic weapons by a military power or a terrorist organization. In retrospect, it is clear that since man's moral development has not kept pace with his technological advance, the world would have been a safer and better place if the secrets of the atom had continued to be mercifully withheld from man. But it is equally clear that what has been thought cannot be unthought, and what has been learnt cannot be unlearnt. We must accept the fact that we live in the atomic age and put the available technology to the most efficient and rational use. As Lord Snow said on his last visit to Washington, there is an urgent need to develop nuclear power instead of having a superstitious fear of it, and to base a nuclear policy more on the science of risks and benefits and less on the search for an elusive absolute safety.

The compulsions of economics dictate that more and more reactors should be put into operation all over the world. Fast breeder reactors use spent uranium fuel after it has been re-

[2] "The Case for Nuclear Power" by Samuel McCracken, *The American Review*, Winter 1979, Vol. 23, No. 2, p. 18.

processed, and they are understandably favoured in countries like India which want to conserve their limited uranium resources, indigenous or imported. Breeder reactors, which generate more energy than they consume, will shortly be producing commercial power in the Soviet Union, Great Britain and France,—to be joined later by Canada, Brazil, Sweden, West Germany, South Africa, India, Japan and Australia. There is a moratorium on breeder reactors in the United States because they use reprocessed spent fuel that yields plutonium out of which atom bombs are made, although as a matter of fact weapons-grade plutonium is pure Pu-239 which is not produced by commercial reprocessing or in power reactors. The United States—the consumer of 30 per cent of the world's energy—has such vast reserves of uranium that it imposes no major burden on itself by forgoing commercial reprocessing which is the best option for other countries without similar uranium reserves.

There are two dimensions to nuclear proliferation—vertical and horizontal. Vertical proliferation consists in the nuclear weapon states increasing or improving their piles of nuclear arsenals. In 1970 the United States and the Soviet Union had 6000 deliverable strategic nuclear warheads, while in 1978 they had over 14000—an increase of 1000 per year. Horizontal proliferation involves the spread of nuclear technology to new areas which were earlier in a state of pristine innocence. The nuclear weapon states have the means but not the will to check vertical proliferation. The U.S. administration has announced that even after SALT II agreement is signed, the strategic weapons budget would increase by 20 to 40 per cent over the last year's level of $10 billion.

The nuclear weapon states are highly selective in their perceptions of risk, and their non-proliferation effort is almost wholly pre-occupied with horizontal proliferation. They are anxious that the assets of nuclear technology should be locked up and kept away from the gaze of "the lesser breed", as if knowledge can possibly be contained today in nation-tight compartments.

Since the Nuclear Non-Proliferation Treaty of 1968 the gospel of non-proliferation has been preached by the nuclear

weapon states amidst the din of dozens of their own explosions every year. Sweden's Hagfors Observatory recorded a world-wide total of 48 such nuclear tests in 1978—27 by the Soviet Union (a record number), 10 by the United States, 6 by France, 3 by China and 2 by Great Britain. The divergence between the words and the deeds of "the big five" gives rise to a lively, inconclusive debate as to whether these nations, most insecure in their super strength, are really leading the world toward nuclear non-proliferation or discreetly promoting nuclear apartheid.

A good example of this general policy of the nuclear weapon states to concentrate on horizontal non-proliferation is afforded by the Nuclear Non-Proliferation Act passed by the U.S. Congress in 1978.

The policy underlying the Non-Proliferation Act has already resulted in the United States losing its leadership in the business of nuclear power. The Act is based on the assumption that customers would be willing to pay $1 billion for the supply of a nuclear power plant from the United States without being sure of getting regular supplies of fuel. The Act grants to the U.S. Government veto rights, wide ranging and long-term, over the purchaser countries' nuclear programme at crucial stages and over the key elements in their fuel cycle. It provides a unilateral U.S. veto over disposal of spent fuel, not only of U.S. origin but of *any* origin, if the fuel happens to have been used in a plant supplied by the United States; and it further empowers the U.S. Government to decide unilaterally not only whether a customer country may be allowed to reprocess its spent fuel but also whether a customer country may export re-processing plants and technology (developed by the customer country) to another country of its choice.[3]

With the dramatic drop in the U.S. share of the world nuclear business, Great Britain, France, Germany and the Soviet Union have been more palpably the beneficiaries of the American non-proliferation policy than the cause of non-proliferation. It is hard to justify loss of business as the price for high thinking,

[3] "Asking too much of our Nuclear Customers" by Donald L. Couchman. *Washington Post,* March 25, 1978.

when it happens to be coupled with loss of international goodwill as well.

India affords an ideal case study of the adverse impact of the Act on countries which are not only friends of the United States but are equally dedicated to the cause of non-proliferation.

Non-proliferation is but one dimension of peace, and like peace it is indivisible. Neither the Non-Proliferation Treaty of 1968 nor the U.S. Non-Proliferation Act of 1978 gives non-proliferation a chance, so long as the stockpiles of nuclear weapons keep on growing in size and lethality. The world cannot long remain half nuclear and half non-nuclear. Any attempt to freeze the existing nuclear power structure must ultimately fail, because it would be checkmated by the spirit of nationalism, — the spirit that triumphs finally over the sword.

Disarming the unarmed

(Debate at Harvard University, 1979
Earlier version, *Newsweek*, June 19, 1978)

In India the role of the atom is that of a worker, and not of a soldier. India uses its nuclear capability entirely for peaceful purposes and primarily for the generation of electricity. Unlike the United States, India does not have such resources and does not enjoy such a luxury of options for generating power that it can afford to regard nuclear fuel as the energy option of the last resort.

India has, in operation or under construction, 4 atomic power stations of two reactors each, 5 research reactors and 3 reprocessing plants. Out of these 12 facilities, only one has a tie with the United States. At Tarapur the United States built the first atomic power station consisting of two 200-MW boiling water reactors which supply electricity to the States of Maharashtra and Gujarat. It was constructed under an agreement (made in 1963 and to continue in operation till 1993) which provides that (*a*) the United States is bound to supply enriched uranium as fuel and India is debarred from getting fuel from any other source, and (*b*) the spent fuel can be reprocessed only after a joint determination by the two Governments that safeguards can be effectively applied.

The nuclear issue in U.S.-India relations

The effect of the Non-Proliferation Act of 1978, passed by the U.S. Congress, is that after March 1980 (which is the cut-off date) no fuel can be supplied or other assistance given to any country by the United States unless that country is willing to put all its nuclear facilities (and not only the facility receiving the fuel or other aid) under fullscope safeguards.[1] It enjoins the U.S. Government to renegotiate all existing contracts to bring them into conformity with the provisions of the Act.

[1] The President of the United States is empowered to make an exception to this rule, subject to a veto by the Congress.

Tarapur is already under international safeguards; but the Non-Proliferation Act requires that if India is to receive American fuel under the terms of the agreement, fullscope safeguards must be clamped on *all* its nuclear facilities, existing or to be brought into existence later.

On the non-proliferation issue, the United States and India are not adversaries but partners in a common endeavour; they are co-visionaries seeking to reach the distant, golden goal of saving mankind from the threat of a nuclear holocaust. The paradox is that it is the one issue which divides instead of uniting the two democracies: there is an identity of ends but divergence of views as to the means.

It is important to clarify that India does not question the motives of the U.S. administration in seeking to contain proliferation. On the contrary, it has great admiration for President Carter's sincere and imaginative calls for a reduction in nuclear arsenals and a comprehensive nuclear test ban. There are, however, several cogent reasons why countries like India are unable to accept the provisions of the Non-Proliferation Act, despite its laudable objective:

(*i*) *Discrimination against non-nuclear weapon nations.* The Act is discriminatory. Its provisions for fullscope safeguards do not apply to nuclear weapon states: it imposes a discipline on non-nuclear weapon countries, which the nuclear weapon countries reject for themselves. The Act virtually divides the world into the "haves" and the "have nots",—the nuclear weapon nations and the second-class nations.

The injustice inherent in the discriminatory scheme is compounded by the definition of the exempted countries. Nuclear weapon states which are lifted above the discipline of the Act are those countries which "manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1st January 1967".[2] Surely, countries with nuclear weapons are more in need of international discipline than those without: the former present a far greater danger to the survival and well-

[2] Definition of "nuclear weapon state" in art. 9 of the Nuclear Non-Proliferation Treaty, 1968, which has been adopted by the Non-Proliferation Act of 1978.

being of the human race than countries without such devastating armoury. Further, to restrict the exemption to countries which manufactured and exploded a nuclear weapon or other device *before the commencement of 1967* is merely to add one more element of arbitrariness to the classification.

It was said of the Nuclear Non-Proliferation Treaty, 1968, that it aimed at caging the puppy of horizontal proliferation while leaving the tiger of vertical proliferation free to maraud the world. It would not be unjust to make the same comment on the Non-Proliferation Act of 1978 which also aims at disarming the unarmed.

(*ii*) *Absence of pragmatism and flexibility.* The great weakness of the present non-proliferation policy is that it does not discriminate between nations which stand at widely different points in the spectrum of proliferation risks. Experts are agreed that there are no foolproof international safeguards for atomic facilities and, further, that where there is a will to make a bomb, a way will be found to make it. Dealing with such a problem calls for discernment and a case by case approach. Pragmatism and flexibility would be far more useful in achieving non-proliferation than rigid rules of law.

(*iii*) *Insensitivity to force of nationalism.* The Act is insufficiently sensitive to the force of nationalism which is a potent factor in the political life of developing countries. It seeks to cast an impossible political burden on countries like India where public opinion would rule out any subservience to a foreign power in an area so sensitive as nuclear energy. The controls and restrictions imposed by the Act are less objectionable and galling in their content than the fact that they are imposed and are to be exercised unilaterally by the United States.

"The white man's burden", to use Kipling's historic phrase in justification of the Empire, was widely accepted in its time, but has now been relegated to the scrap-heap of history. The nuclear weapon states' burden is an idea widely prevalent today but time will deal it the same fate. Surprisingly, the force of sturdy nationalism which was the matrix for the

formation of the United States is the one Asian force least heeded in the formation of American foreign policy.[3]

(*iv*) *Sacrifice of international leadership.* The United States, the first and biggest nuclear power in the world, should be the leader of a world order which works towards a universal policy of atoms for peace. No world policy is likely to be sustainable unless it is based upon justice, equality and mutual trust, while the scheme of nuclear hegemony underlying the Act would only arouse feelings of distrust and unwanted dependence on the part of developed as well as developing countries towards the United States.

The views expressed by several scientists against the present American policy seem to have received less consideration than they deserve. Prof. David J. Rose and Mr. Richard K. Lester in a thoughtful contribution to the debate[4] observed, "Since nations must depend on one another, they lose more by going separately than by staying in partnership. Our analysis shows that this partnership must include the developing countries, since many of them, if they are excluded, are capable of upsetting the international order through the acquisition of nuclear weapons and other acts."

"The U.S. is really calling into question a basic trust in the pledge which governments have taken in signing the Non-Proliferation Treaty" says Dr. Sigvard A. Eklund, the eminent Swedish nuclear physicist, who has been the director-general of the International Atomic Energy Agency (IAEA) since 1961. "It is fortunate that the Non-Proliferation Treaty was negotiated back in the 1960's, because it would be very difficult to conclude such a treaty in the political climate of today."

A policy which seeks to freeze nuclear capability as it existed on January 1, 1967, is irreconcilable with notions of international ethics or equity among nations. If the United States fetters itself by its own internal law which would isolate it from the mainstream of worldwide nuclear development, it would be only sapping its ability to lead and guide international non-

[3] See Selig S. Harrison's *The Widening Gulf—Asian Nationalism and American Policy,* pp. 388-9.

[4] "Nuclear Power, Nuclear Weapons and International Stability" in *Scientific American,* April 1978.

proliferation policy. Dr. Harold M. Agnew, director of the Los Alamos Scientific Laboratory, expressed a widely held view when he said, "The rest of the world is going like gangbusters on nuclear development, and the United States will not even be around to make the rules, because it isn't playing the game".[5]

(*v*) *Self-defeating scheme.* The scheme of the Act is self-defeating, since it would motivate nations to accelerate their efforts to achieve nuclear self-reliance at any cost. Today 208 nuclear plants are operating in 22 countries, and by 1985 probably 515 nuclear plants will be in operation in 42 countries. If some of these countries developed their own nuclear technology to make up for a cut-off of fuel or assistance from abroad, then the regulations intended to achieve non-proliferation will result in quite the opposite—more proliferation.

(*vi*) *Breach of faith and of contract.* The Act seeks to compel the United States to commit a breach of contract, when the other side is unwilling to renegotiate the existing agreement. The sanctity of contract would have no meaning if the party changing its mind is to be entitled to call for renegotiation of earlier commitments, on pain of abrogation.

India made a very large investment in the Tarapur reactor in full faith that the United States would live up to its assurances about making timely supplies of enriched uranium for continuous and efficient operation of the plant. If the rigour of the Non-Proliferation Act is to be enforced against India after March 1980, it would be a sad irony of history that the Carter administration which has been more friendly towards India than perhaps any earlier one would have to bear the odium of being the first American Government to commit a breach of faith with India.

Two well settled principles of international law may be noted here. *First,* a state which has entered into an agreement with another state may not invoke the provisions of its internal law as justification for its failure to perform the agreement.[6] The municipal legislation of a state does not justify a breach

[5] *The Sun* (Baltimore), January 17, 1979.

[6] This principle is recognized in art. 27 of the Vienna Convention.

of faith in its international dealings. *Secondly,* if an agreement between two states is terminated by a breach on one side, the other party is released from any obligation further to perform its duties under the agreement.[7] Thus at any time when the United States refuses to supply fuel under its agreement, India would be released from its obligations (*a*) to use only American fuel in its Tarapur plant, (*b*) to keep that plant under international safeguards, and (*c*) not to reprocess the spent fuel except after a joint determination with the United States. Would such a result promote the cause of non-proliferation?

India's record as a nuclear power

The question may now be considered whether India has any moral right to urge the above points in support of its unwillingness to accept the fullscope safeguards enjoined by the Act.

India is a significant nuclear power, without being a nuclear weapon power. Among the large and diversified civilian nuclear establishments in the world, India's would rank sixth or seventh. India's nuclear establishment is remarkably autarkic in function and capability. The majority of its nuclear facilities have been or are being constructed with its own indigenous expertise.

There has been no greater champion of disarmament and of reduction in nuclear arsenals than India. The Partial Test Ban Treaty of 1963—which prohibits explosions in the atmosphere, outer space and under water—was readily signed by India, since that Treaty did not discriminate between nuclear weapon countries and others.

India refused to sign the Non-Proliferation Treaty of 1968 because it discriminated against non-nuclear weapon states.[8] Acceptance of fullscope safeguards under the Non-Proliferation Act of 1978 would amount, in essence, to acceptance of the Non-Proliferation Treaty of 1968 with some additional drawbacks and more severe restrictions. India has repeatedly expressed its willingness to consider signing any total test

[7] This principle is recognized in art. 70 of the Vienna Convention.

[8] France, China, Pakistan, Israel, South Africa, Brazil and Argentina are among the other nations which have refused to sign this Treaty of 1968.

ban treaty, and any non-proliferation treaty, which would impose identical discipline on all countries equally and impartially. Today, all its three operational power reactors, as also the near-operational reactor at Rajasthan, are subject to international safeguards.

It is a measure of India's devotion to the cause of nuclear discipline that it continued with the IAEA safeguards on the Rajasthan reactor even after Canada stopped its nuclear cooperation in respect of that reactor. India is a willing and useful participant in the International Nuclear Fuel Cycle Evaluation Programme which is examining the entire fuel-cycle problem to find technical modifications or safeguards aimed at reducing the dangers of proliferation.

As against the above proven record of responsible conduct, three points are urged against India.

The *first* point made with unfailing regularity is that India exploded a nuclear device in May 1974. India has steadfastly maintained that it was for peaceful purposes. That blast might be called an act of unwisdom. But those who would like to throw stones at India may be reminded of the rigorous qualification long ago laid down as necessary for the casting of the first, and the equally hoary adage about the folly of doing so on the part of those who live in houses built of exceptionally fragile material. No evidence has been produced by any of the accusers that the explosion involved a breach of contract with any foreign country with which India had nuclear collaboration, or that it was not for peaceful purposes.[9] Yet no other nuclear explosion has ever had so little physical fall-out and so much political fall-out.

In 1974, the year of India's one and only atomic blast, 37 explosions rocked the world—19 by the Soviet Union, 9 by the United States, 7 by France, 1 by China and 1 by the United Kingdom. The world has overlooked those sophisticated blasts. While it has let the waters of Lethe cover those

[9] In 1970, 1971 and 1972 the IAEA in Vienna had organized panel discussions among experts at which there was general agreement on the need for continuation, even intensification, of the programme of nuclear blasts for industrial and other public projects.

peccadilloes, the reverberations of India's blast of 1974 continue to be heard round the world.

If there is any lesson to be drawn, it is that one explosion activates international reaction, but a series of explosions anaesthetizes it. One blast brings discredit, but a sequence brings prestige and power. A modern Alexander Pope would sing—

A little explosion is a dangerous thing;
Drink deep or taste not the atomic spring.

Secondly, it is said that while the present Indian Government's sincere devotion to the cause of non-proliferation cannot be doubted, it cannot afford a firm basis for American response, since a future government may go back on the current policy. If this argument is to prevail, there seems little point in having any international agreement at all. What prevents the future government of any country from repudiating any treaty or disavowing any obligation undertaken by its predecessor? History is strewn with the debris of broken treaties. Politicians seem to look with greater understanding on states that breach treaties than on states that do not sign them.

Thirdly, it is sought to be argued that if India has no intention of diverting nuclear material for improper purposes, why is it reluctant to submit to fullscope safeguards? The answer is to be found in the force of nationalism and the feeling of self-respect (referred to earlier) which make developing nations as allergic to technological domination as they were to political domination in the heyday of imperialism. Would you suspect the integrity of an individual because he is unwilling to have his person and premises searched periodically by Interpol?

To the United States, cutting off nuclear fuel to Tarapur may be just a routine step in implementing an ordinary law. To India, it would be repudiation of a solemn agreement of great economic and political significance. It would be a unilateral withdrawal from a binding obligation to feed a plant that lights millions of homes and supplies motive power for industries that ensure millions of jobs. The Non-Proliferation Act is a bitter example of the inability of the law to solve a human problem.

Apartheid in South Africa

(Address in the Plenary Session of the General Assembly of the United Nations, November 16, 1977)

During the last three suffering decades, millions of words have been spoken and written in this and other international forums on Apartheid—that relic of the Dark Age. The United Nations has passed sheaves of resolutions "noting" and "condemning" the atrocities perpetrated in South Africa by men who have eaten together of the insane root that takes the reason prisoner. Time and again, the United Nations has "decided" and "demanded" that the rightful citizens of South Africa—so mercilessly plundered, profaned and disinherited—be given back the rights which befit the dignity and worth of the human person.

Those resolutions have made no impact on the attitude or action of the racist regime which still goes its way as of yore. In recent months it has gone further up on the escalator of barbaric injustice.

Do other nations have merely to stand benumbed in horror or disgust? How has the South African Government been able to defy the unanimous opinion of the civilized world? The answer affords a sad commentary on the power of money to corrode the human spirit. Some highly advanced nations knew what was right and did what was wrong. They preferred money to morals, profits to ethics, commerce to values. They tried—with success in most cases—to put out of their conscious mind the fact that the wheels of industry which were blithely turning in their own countries to produce weapons and other essential goods for South Africa were grinding the faces of the blacks thousands of miles away. Oil and armaments or the licences to make them which were necessary to ensure the suppression of 21 million non-whites, continued to pour into South Africa. In some countries there are powerful sectional interests to whom gold is so dear and flesh and blood so cheap. One wonders

how nations which collaborate with a foreign regime that practises governmental terrorism can cope with private terrorism at home.

What will be the shape of things to come in South Africa? Today the blacks are desperate beyond measure. They are hounded and hunted in the streets and have before them only the bleak landscape of blood and despair. But there can be no doubt—no doubt whatever—that the cause of liberation will ultimately triumph. The society which has imposed Apartheid is a society with a death wish. Slowly, ominously, the shadows are gathering around the inhuman regime, and the darkening evening will be followed by the engulfing night. The soul of Stephen Biko is not slain. Still his spirit walks abroad. There is an inexhaustible supply of brave men and women who are prepared to die on their feet rather than live on their knees. In these dark days a great cause and a deep-rooted faith sustain them.

The most desirable scenario would no doubt be that the South African Government may see the light and dismantle the brutal repressive measures which penalize so savagely the accidents of birth and colour. But all indications at present are that that Government is light years away from any such reasonable solution.

The question is how much longer it will be before racism is given its quietus in South Africa. That will depend largely upon the United Nations and on how far nations are united in obliterating the slur on civilization. No resolution can be too tough, no sanction too severe, no embargo too wide, when we are trying to eradicate such an inhuman evil.

We must never forget that the United Nations' resolutions are only as good as their enforcement. Mere hard words break no bones, much less regimes. Racism is a fast breeder reactor: it generates more explosive energy than it consumes. Such a self-generating vicious power can be checked or destroyed only by making it collide with another power. That other power can have various components—man's unconquerable mind, the armed liberation movement of those who are left with no alternative, and universal, total embargoes and sanctions in place of mercenary collaboration. South Africa, though the

second largest producer of gold and the fifth most industrialized State, is spiritually impoverished and morally bankrupt. It would wither surprisingly soon if it is totally isolated and cut away from the outside world.

Despite all the falterings and failings, there is clearly discernible in our times a groping towards the ideals of human unity and human dignity. The Government of India shares President Carter's great objective to set standards of decency in national and international affairs and to foster human rights and values whose historic time has come. The willingness of a State to sever economic and cultural links with South Africa is a fair index of its commitment to human rights and values.

In this field, the United Nations has much to do, and little time to do it. One of its most urgent tasks is to add a new dimension to international law, to evolve jurisprudence on the international crime of racism. The present law enforced in civilized societies presents the ludicrous spectacle of trying and punishing those who cause an injury to an individual, but not those who devastate or snuff out the lives of a race or a whole segment of a nation. An entirely new branch of law must be developed to bring home personal responsibility to those guilty of such gigantic crimes. Nothing would concentrate the mind of the international community so wonderfully on racism as an international trial.

From its very nature, racism cannot be merely an internal problem of the country which is its victim; it can never be dealt with by the municipal laws which are themselves made by the racist society. Wherever racism is practised, its fall-out crosses the nation's frontiers, and it diminishes every other nation since we are all involved in mankind. The International Convention on the Suppression and Punishment of the Crime of Apartheid to which only 37 States have so far become parties, is the first small step in the right direction.

Having defined the international crime of racism, the United Nations should support (if not set up) a truly judicial, non-political forum to try individuals—whatever be the office they hold—who have been guilty of this crime against humanity. And the trials of the guilty should begin and proceed with all

convenient speed. There is a memorable historical precedent for such trials. The Nuremberg trials brought to book those whose record of brutality was shorter, though not less shocking, than that of the men in power in South Africa today.

May I reiterate the basic point that it is essential for the international community to enact the substantive and procedural laws which will ensure that whoever sins against humanity shall carry the personal burden of an eventual reckoning.

17

THE LAW AND LAWYERS

Lawyers in the dock

(The Government Law College, Bombay, 1948)

Perhaps more uncharitable things have been said about the lawyer than about any other professional of even half the lawyer's utility to society. To begin with, the Bar has been called not so much a profession as an excuse for not having one. Chaucer in his *Canterbury Tales* portrayed the lawyer who took good care to seem "busier than he was". Maybe, the average lawyer has not changed much in this respect since the pilgrims set out from the Tabard Inn.

One of the commonest calumnies hurled against the lawyer is that his profession is one where success depends on trickery and chicanery. A doctor said to Sydney Smith's brother who was a lawyer, "But admittedly your profession does not make angels of men". "No", came the quick rejoinder, "your profession gives them the first chance of that".

The lawyer's tricks of the trade and juggling with words have become proverbial, mainly through a repetition of the charge. Dean Swift brusquely referred to lawyers as men who prove that white is black or black is white "according as they are paid". Tulliver, in *The Mill on the Floss*, expressed the opinion that "the law's made to take care o' raskills". Lawyers are supposed to have so little regard for truth even in solemn documents that Charles Reade said caustically, "The truth will out—even in an affidavit".

The common charge against the lawyer is that he is a parasite on society. "A sty for fattening lawyers in on the bones of honest men", was the comment of Thackeray on the Court of Chancery. Lord Justice Knight Bruce cynically observed in an administration suit that "the estate will be divided in the usual

way among the solicitors". A contested case in which eminent counsel are engaged is the luxury of the rich or the refuge of despair. It often spells ruin to the average citizen. Voltaire used to say that he was ruined twice in his life — once when he lost a law-suit and once when he won a law-suit.

In the most famous of all soliloquies, "the law's delay" is placed by Shakespeare among the chief ills of human life. It has also been recorded that Oliver Cromwell "spoke somewhat against lawyers" and was pained to see "what a tortuous ungodly jumble English law was". Nearer our own times, Tennyson deplored the spectacle of advocates toiling for years —

> *"Mastering the lawless science of our law,*
> *That codeless myriad of precedent,*
> *That wilderness of single instances,*
> *Thro' which a few, by wit or fortune led,*
> *May beat a pathway out to wealth and fame."*

Disraeli was equally harsh on lawyers. "The chief characteristics of the legal mind", he said, "are expounding the obvious, illustrating the self-evident, and expatiating on the commonplace". Jeremy Bentham, a lawyer himself, is no less severe — "Ignorance of the law excuses no man except the lawyer". Bentham was more right than would seem at the first blush. English magistrates are not expected to know, and sometimes do not know, any law. Indeed, it has been established as clear law in England that it is not defamatory of a magistrate to say that he knows no law, for there is no reason why he should.

When revolution comes in any land and the people take charge of their affairs at last, the first reform is always the execution of all lawyers. It is often the only reform which subsequent ages do not regret!

A balanced view would suggest that the entire legal profession should not be reviled in this fashion. Perhaps it is a natural weakness to revile that which we cannot do without. So supreme is the value of law that Napoleon said, "I will go down to posterity not by the battles I have fought but by the Codes I have given to France".

It is not true that law defiles, it is not true that law degrades. The legal profession has produced some of the finest and most independent characters whose names are imprinted on the scroll of history. No one can pretend that any system of law is perfect, but by its very nature it can never be.

The profession of law, said Justice McCardie, has two aspects. It may be regarded as a pursuit which yields, if success be gained, a reward of fees and emoluments. But it may also be looked upon as a vocation which offers the joy of intellectual achievement, which claims the allegiance of unswerving honour, which asks for the guardianship of high tradition, and which affords a wide field for loyal and generous service to the community.

Thackeray described a great lawyer as a man "who had laboriously brought down a great intellect to the comprehension of a mean subject, and in his fierce grasp of that, resolutely excluded from his mind all higher thoughts, all better things; all the wisdom and philosophy of historians; all the thoughts of poets, all wit, fancy, and reflection; all art, love, truth altogether, so that he might master that enormous legend of law. He could not cultivate a friendship or do a charity or admire a work of genius or kindle at the sight of beauty. Love, nature and art were shut out from him". This is a gratuitous libel on a great profession to which Thackeray had himself been apprenticed once. It depends entirely upon the individual himself whether he will allow the legal profession to narrow his mind or will regard it as an opportunity to learn comprehensively the story of human life and human nature.

As Lord Buckmaster observed, it would be more true to say of the finest lawyers that, so far from having a narrow outlook on the world, there is no horizon too large for them to gaze at. There is no learning that comes amiss to the lawyer; there is no phase of all the myriad mysteries of the human heart which may not be the subject of the case which he has to consider.

Of lady advocates and Judges

(Dinner to celebrate the Centenary of the Bombay Bar Association, August 20, 1966)

There is the story of an old Maori who was possessed of large landed wealth and who called in his lawyer to make his will. The lawyer took great pains over the document and ultimately brought it to the Maori and explained to him its provisions. Contrary to the lawyer's expectation, the Maori was furious. He said, "You are *my* lawyer and it was I who entrusted the job to you and paid your fees. You have left all my properties to everybody else and nothing at all for me!"

I feel somewhat in the mood of the old Maori today. The Advocate-General has told you all that could be usefully said about the hundred past years of the Bombay Bar Association and there is hardly anything left for me to add. In despair I am constrained to go back to an earlier era, to the time when the Bar came into existence and even further back into the twilight of history.

The power of clear statement has been called the great power at the Bar. But it has not always been so. You will recall that when William the Conqueror came to England, he introduced a system of ordeal by battle or trial by battle. The fight had to be by the litigant in person unless he was allowed to be represented by a champion. Thus the gladiator was the predecessor of the modern advocate.*

I have never stopped thanking Providence for the change in the mode of advocacy. If the mode which prevailed in the earlier centuries were to continue today, there would be a drastic change in the leadership of the Bar.

You may be curious to know when ladies started joining the legal profession. The first lady to be appointed an attorney of

* See ante, p. 30.

the Court was one in the thirteenth century. She features in a reported case, but, I am unhappy to say, that case is the earliest authority on the powers of the Court to deal with contumacious conduct. The lady appeared for a client who lost the suit but she would not accept defeat. She faced the combined onslaught of logic and reason, law and fact, and, though vanquished, continued to argue even after the judgment had been pronounced by the Court. Regretfully, she had to be bodily removed from the court-room. I am sure your heart goes out over the centuries to this woman—brave and passionately devoted to the interest of her client; defeated, but unsilenced and unconvinced. History records that thereafter no lady was appointed an attorney of the Court for a long, long time.

Now the ladies at the Bar have to some extent been living down the unhappy memory of their thirteenth century predecessor. Recently, Evershed, Master of the Rolls, was in Australia, and he addressed the Australian Bar. He said he was very happy to find so many women in the audience. There was loud clapping. He added that he hoped one day some of these ladies would adorn the Supreme Courts of their respective States. There were great cheers. Then he proceeded to predict that one day at least one woman would sit on the Bench of the High Court of Australia. There was thunderous applause, particularly from the female members of the Bar. And then he added, "Thank God, by that time I shall be dead!"

Many Judges are present here and we are glad to have them in our midst. This is one of the few and precious occasions when we can talk in their presence irrelevantly and irreverently. Large volumes have been written on the way Judges must behave and conduct themselves, as they have been written on the way in which the Bar must comport itself. But perhaps one of the tersest remarks on what Judges are expected to do was the observation made by Lord Asquith when he was a member of the Court of Appeal. The members of the American Bar were invited to England and the English Bar gave them a dinner. Lord Asquith addressed the gathering and said that he could answer in a few words the question which had been put

to him as to what were the respective functions of the King's Bench Division, the Court of Appeal and the House of Lords. He said, "It is the duty of the trial Court to be slow, courteous and wrong. This is however not to say that it is the duty of the Court of Appeal to be quick, rude and right, for that would be to usurp the function of the House of Lords."

Sentinels of democracy

(The First Annual Conference of the Bar Association of India, Bombay, November 18, 1972)

At the end of the First World War President Wilson said that the world must be made safe for democracy. Up to now we have gone as far as making it safe for committees and conferences.

A conference like this serves the useful purpose of getting many lawyers together from the far corners of the subcontinent. It enables you to have a respite from the law reports—the musty volumes dark with the shadows of the decades, and grim in the solidity of their binding and in the amplitude of their cubical contents. Secondly, it enables you to have a clearing-house of ideas, where the pros and cons of the multifold problems facing the country can be analyzed by trained legal minds.

We must remember that democracy, with freedom of opinion and opposition, is not the normal way of organizing society, but it is a rare human achievement. It involves the co-operation of large numbers of citizens in the active work of the government. The State has a claim on your energy, time and thought. The rich Athenians gave free gifts of money for ships or choruses or public monuments; the poor Athenians gave—themselves.

In a vast democracy like India, many citizens are bound to be undimensional. But no lawyer has any excuse for being undimensional. By his training and equipment and by his professional competence he is better qualified than the rest of the citizenry to take an active part in the making of laws and the formulation of public policies. He would be failing his country if he did not do this duty.

The lawyer has to act as a catalyst. The responsibilities which today lie on the shoulders of the lawyers are far greater than at any earlier time in world history.

A topic worthy of your very careful consideration is that of the absurdly low salaries we pay our Judges. Chief Justice Hughes said that an honest, high-minded, able and fearless judge is the most valuable servant of democracy. In order that such judges may still continue to adorn the Bench, it is necessary that the legal profession should ensure that their emoluments are reasonable and not kept so low as to make it difficult for good and honest men to accept the office.

Another important subject is legal education. The quantity of demand has affected the quality of supply. Cheap professionals can be produced on an extensive scale like cheap beer, but that can hardly meet the vital needs of a country for intellectual leadership. We produce lawyers who seem lost without case law to support their propositions. The average lawyer who finds himself without a precedent to cite, is like a tycoon without a balance-sheet, a jazzman without a trumpet, a gossip without a club.

Further, you might well discuss at a subsequent conference the balance-sheet of the legal profession since 1950. You will find many liabilities remaining undischarged.

Unfortunately, in the legal profession we have not only lost the way, but also seem to have lost the map, to quote the words of G. K. Chesterton. What we need are lawyers who are prepared to stand as sentinels of democracy, as standard-bearers of the public cause they believe in. I am reminded of the words of Arthur Koestler, "If the Creator had a purpose in equipping us with a neck, He surely meant us to stick it out."

The subjects which you are going to discuss for three days bristle with difficulties. But that is as it should be. A world in which iron did not corrode and wood did not decay, in which gardens had no weeds and washing was as easy as the soap-makers' advertisements describe it, in which rules had no exceptions and things never went wrong, would be a much easier place to live in. But for the purposes of training and development it would be worth nothing at all. It is the north wind that made the Vikings. It is the resistance that puts us on our mettle. It is the conquest of the reluctant stuff that educates the worker. I wish you will have enough difficulties in your deliberations to keep you alert and resourceful.

Professionally speaking

(All India Radio, Bombay, December 23, 1968)

Perhaps the best reason for going into a profession is the inner compulsion that selects one's career—absorbing interest and coercive aptitude which admit of no question as to the choice of a calling. I cannot pretend that I had such a reason for the choice of the legal profession. One reason for the choice was deference to my father's wish. The other was that my application for a lecturership in English was rejected and the post went to a girl who had four years' teaching experience while I had none. When I met her 24 years later I told her that she was my greatest benefactor.

No doubt, in the law you do not find what you find in art and literature which are the finest flowers of culture. In the law you seek in vain for the winged phrase, for impulses of the mind voyaging through strange seas of thought alone. The law moves on a different plane. It is a great anthropological document. It reflects man's sense of order and justice; embodies rules and traditions which hold society together; and supplies the enduring element, the dimension of permanence, in history. There can be no government without order; there can be no order without law; and there can be no administration of law without lawyers. For almost 3,000 years, the law has stood sentinel over the progress of man.

The law cannot but throb with human interest, for its sole concern is men and women and their affairs. It touches life at countless points. Justice Holmes expressed his conviction that "a man may live greatly in the law as well as elsewhere". The legal profession at the highest level develops absorptive and analytic capacities of the human mind and offers great intellectual stimulus. It is no small service to be called upon to defend life, liberty and the other fundamental rights.

But a rare degree of equipment is needed to discharge such duties properly. A lawyer with a well-furnished mind alone can

be truly a counsellor at law; he alone can, not merely look up precedents, but guide his client along the path of wisdom, even of generosities which may appear irrelevancies to the preoccupied client. In the hands of such a lawyer, the law represents the application of reason to noble and purposeful ends.

There is the lighter side to the law—mainly fed by the ignorance and foibles of men. There are few places where the amusing and exasperating sides of human nature can be watched so closely and so continually as in a court of law. There is your opponent, who, though vanquished, can argue still. There is your client whose cupidity is sometimes matched only by his illiteracy. I once had a case where the Appellate Assistant Commissioner totally disbelieved the assessee and his account books. That official happened to be a lover of Shakespeare. After reciting some facts, he wrote in his order that there was something rotten in the State of Denmark. The assessee brought to me draft grounds of appeal to the Tribunal against this order, wherein it was stated that the A.A.C. had mixed up the facts of some other case since the assessee had no dealings with Denmark and that in any event the A.A.C. ought to have held that there was nothing rotten in the State of Denmark!

As we do our arguments in Court, in a sense our daily chores, let us have no exaggerated sense of our own importance or of our contribution to the determination of cases. The famous barrister, Kemp, Q. C., was fond of quoting the saying that out of every hundred cases, ninety cases win or lose themselves; three cases are won by advocacy; and seven cases are lost by advocacy.

As in the case of any other human institution, the law too can be debased to low ends. The legal profession can be a mean pursuit, instead of a high adventure. It can be used merely as a means of livelihood instead of being pursued in the grand manner so as to afford opportunities for a full and fulfilling life.

Truth and service above all

(*The Illustrated Weekly of India*, October 1, 1978)

According to Mahatma Gandhi, a true lawyer is one who puts truth and service in the first place. In his autobiography the Mahatma observes that the law is not an "intellectual legerdemain to make black appear white and white appear black", but it is a ceaseless endeavour "to enthrone justice".

These words well represent the ideal of excellence in law. Without the law, the crown would always go to the loudest voices, the biggest sticks and the readiest fists.

Redressing wrong is, in many religions, an attribute of the Divine; and the law serves one of its greatest social purposes when it dethrones wrong. It is this aspect of the law which made a thinker observe that God is more palpably present in a court of justice than in a monastery.

High moral tone

Those who won freedom for India and created its constitutional system were, like the founding fathers of the United States' Constitution, men of rare talents and dedication. One point of similarity, and perhaps the greatest, between the constitutions of the world's two largest democracies is their high moral tone. The preamble to a constitution is its identity card; and the preamble to the Constitution of each of the two countries embodies lofty ideals which are intended to serve as the enduring foundation of a great republic.

For instance, our Constitution-makers were so keen to uphold the nation's honour and public integrity that they provided for a built-in mechanism by which every debt, however big or small, owing by the Government would be duly discharged. Any creditor of the Government can file a suit for recovery of a debt and, once a decree is obtained, the amount becomes automatically charged on the Consolidated Fund of India under art. 112 of the Constitution, and art. 113 provides that even Parliament has no right to vote upon it.

Acharya J. B. Kripalani spoke eloquently in the Constituent Assembly on October 17, 1949:

"I want this House to remember that what we have enunciated are not merely legal, constitutional and formal principles, but moral principles; and moral principles have got to be lived in life. They have to be lived, whether it is in private life or it is in public life, whether it is in commercial life, political life or the life of an administrator. They have to be lived throughout. These things we have to remember if our Constitution is to succeed."

Some politicians refer to the provisions of the Constitution as having become anachronistic with changed times. In fact, it is good faith and the sense of decency and honour which have unfortunately become anachronistic in our public life today.

Lawyers chasing ambulances

Woodrow Wilson observed: "Law is the crystallization of the habit and thought of society." Therefore, when society degenerates or its moral fibre is impaired, the legal system reflects the depravity. In 1871, Walt Whitman found an America of material plenty but lacking in "moral conscience, the most important, the vertebra of state or man". What he saw sounds familiar.

As an example of the perversion which the law suffers when it is commercialized, we may look at damages awarded for personal injury. Two and a half years ago *The Economist* (of London) said:

"Greed is as human as eating; and demanding gigantic damages for real or imagined injury as American as apple-pie. That is no accident; true to its country's entrepreneurial tradition, the American law industry has devised a splendid marketing aid to increase its turnover, the contingency fee, which rewards the lawyers with a fat slice—typically, 30 per cent—of any damages they get for their client, but nothing if they lose. No sale, no commission. What could be fairer than that? And if once you accept that law is not merely the rarefied dignity of the supreme court but also a commodity to be sold like popcorn or hairdressing, can you complain that its practitioners indeed go out and sell, chasing ambulances, drumming up class actions in the vast new public interest market opened up by the rise of consumerism?"

On February 7, 1978, a court in California, giving effect to the jury's verdict, ordered the Ford Motor Company to pay $127.8 million in damages to a teenager boy who had suffered burns over 95 per cent of his body when the gas tank of a Ford car exploded. The jury awarded the youth $125 million in punitive damages and $2.8 million in compensatory damages for the injuries he had suffered in the car accident. The law of torts under which such damages were awarded is the same in the United States as it is in the United Kingdom, in India and in other countries of the Commonwealth. However, such fantastic amounts of damages would be unthinkable in any of these countries where the law is the same but a different approach is brought to bear on the problem. The highest amount of damages for personal injuries awarded in England and Wales up to 1975 was £124,100 (including £14,100 "special" damages).

When preposterous amounts are awarded as damages in accident cases and lawyers become ambulance chasers, it must inevitably result in a steep increase in insurance premia which everyone who takes out appropriate insurance must pay. Thus the entire society suffers and the law becomes an instrument of injustice rather than an instrument of redress. American surgeons currently pay as much as $20,000 to $25,000 a year to cover the risk of claims based on negligence; while in a high-risk speciality like neuro-surgery they may be asked to pay three times that premium.

Verbosity of statutes

Excellence in law will never be attained without getting rid of the verbosity of statutes. The lack of simplicity and clarity in laws has been criticized in England since the 15th century. If the complaint has been running well over 500 years, the cause for it is not likely to be ended soon. On the contrary, the most conspicuous features of present-day legislation—its volume and its complexity—definitely aggravate the ground for complaint.

As regards the drafting of statutes, we have unfortunately adopted the British model which is far worse than its European counterparts. For instance, the British law of copyright runs to 92 pages. The French law covering the same area, and printed in similar type-size, could be contained in 20 pages and the Swedish in only 13 pages. Even shorn of those provisions for

which there is no equivalent in the laws of the other countries, the British law would take up about 70 pages—more than three times the French and five times the Swedish.

Referring to a certain statute, Lord Reid said that he found it impossible "to discover or even surmise what the draftsman can have had in mind". Commenting on the language in which different Acts of Parliament were couched, various authorities have expressed their deep dissatisfaction. "Laxity or ambiguity of expression," was the verdict of the Statute Law Commissioners in 1835. "There is at least one passage in it which is absolute nonsense," observed Vice-Chancellor Kindersley in 1854. "Verbose and tautologous," was the comment of the Master of the Rolls in 1834. "That chaos of verbal darkness," was how Lord Justice McKinnon described a British statute in 1944. "Absurd," said Justice Harman about another law in 1958.

Simplicity and clarity

One of the ways President Carter chose to show he was a people's President was to announce his support for the simplification of legal language by ridding statutes and documents of obfuscatory terms. In November 1977 the President issued an executive order directing that "Regulations should be as simple and clear as possible", and bureaucrats were asked to undertake "write-it-right" programmes. Insurance companies, banks, utilities, credit-card firms, car-rental agencies and the like have hired consultants to help them say what they mean in the fine print—and, indeed, to make the print less fine.

The New York State Legislature passed a major piece of consumer legislation in 1977 to ensure that laws affecting common people would be "plain-language laws". The new legislation requires that apartment leases and other consumer contracts be "written in non-technical language and in a clear and coherent manner using words with common and everyday meanings". It is about time India followed suit and made a determined attempt to cure our laws of their incredible fuzziness.

For instance, instead of our lengthy and needlessly elaborate mortgage deeds, there could be half a dozen statutorily prescribed forms of different types of mortgage, and all that the

parties may be required to do is to indicate the particular form which is applicable to their case and to give specific particulars like the names of the parties, the description of the property, etc. and indicate deviations, if any, from the prescribed form on any particular points. This would eliminate the enormous waste of paper and typing which is involved in the present method of documentation.

The administration of justice has become so obsolescent that most people regard the law as an enemy rather than as a friend. The law may not be an ass but it is certainly a snail: the operation of our legal system is not merely slow but is susceptible to the most shameless delaying tactics, and resort to the courts has become a costly lottery which takes years in the drawing. As on December 31, 1977, there were no fewer than 587,319 cases pending in the different High Courts* of India, not to speak of the far greater number of cases pending in the subordinate courts.

The ideal of excellence

Lord Devlin recently pointed to three major defects in the present legal system in Britain: the availability of legal services depends upon wealth rather than need, mitigated only marginally by legal aid, which rightly has a low priority among the social services; justice is defined by an adversary system which is costly and primarily protects only the better-offs; and the focus of the system on protecting property tends to obliterate the social responsibility of lawyers. These words apply equally to the situation in India. Though the problem of the administration of justice is so vast and so urgent, we have not even started nibbling at it.

There can be no excellence in the law without excellence in lawyers. Chief Justice Warren Burger of the United States recently expressed his belief that about one-half of America's practising lawyers are not adequately qualified to represent their clients; and he added that the incompetence of lawyers is one of the major reasons for delays in courts. The Chief

* As on December 31, 1983, more than a million matters were pending in the eighteen High Courts, and more than 1,37,000 matters were pending for admission or final hearing in the Supreme Court.

Justice further stated that some United States lawyers do not even know how to ask a question in court. Others object to everything, he said, giving the example of a lawyer who exclaimed, "That is a leading question!" when a witness was asked: "Is your name Mr. Goldman?"

One of the reasons for the incompetence of so many lawyers is the incredible and ever-increasing complexity of the law. The legal profession requires a capacity for hard work far above the ordinary. When an anxious mother asked Lord Thurlow whether he would advise her son to take up law as a profession, the Lord Chancellor's reply was: "Madam, can your son work like a horse and live like a hermit?" Lord Reading made the memorable quip that when he joined the Bar he thought that it would be a bed of roses; he soon discovered that it was either all roses and no bed, or all bed and no roses.

Certain ideals and values which open up a larger meaning to human existence will always be beyond the pale of the law; and that is why a lawyer has to be well versed in other subjects if he desires to aim at excellence.

"The law the lawyers know about
Is property and land;
But why the leaves are on the trees,
And why the waves disturb the seas,
Why honey is the food of bees,
Why horses have such tender knees,
Why winters come when rivers freeze,
Why Faith is more than what one sees,
And Hope survives the worst disease,
And Charity is more than these,
They do not understand."

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NANI A. PALKHIVALA'S name is a byword in India's legal world. A man of many and varied parts, he has crossed with ease the law's narrow confines and has gone beyond into numerous other fields. His life's work, as evidenced by this volume, bears testimony to his passionate commitment to public causes. He has given generously and unsparingly of himself and his talents to the nation whenever the occasion demanded – most particularly in defence of the rights and liberties of the common man, so that the well-springs of democracy may remain undefiled.

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